

980 CMR 1.00: RULES FOR THE CONDUCT OF ADJUDICATORY PROCEEDINGS

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1.01: Scope and Construction of Rules

- (1) Scope. 980 CMR 1.00 shall govern the conduct of adjudicatory proceedings before the Energy Facilities Siting Board.
- (2) Application of 980 CMR 1.00. 980 CMR 1.00 shall apply to all adjudications conducted by the Board except when a specific provision of 980 CMR indicates otherwise.
- (3) Definitions. For the purpose of 980 CMR, the following definitions shall apply unless the context or subject matter requires a different interpretation:

Applicant means a person who submits to the Board an application or petition seeking determination of a matter within the Board's jurisdiction, or who has a matter referred to the Board by the Chairman of the Department of Telecommunications and Energy pursuant to M.G.L. c. 164, § 69H.

Board means the Energy Facilities Siting Board.

Board Member means any of the nine persons set forth in 980 CMR 2.03(1) or any person named to serve as a designee under the terms of 980 CMR 2.03(3).

Chairman means the Chairman of the Energy Facilities Siting Board.

Director means the person appointed by the Chairman to direct the work of the siting division and to conduct the day-to-day business of the Board as well as to perform any other duty delegated by the Chairman.

Hand Delivery means delivery by methods other than pre-paid U.S. mail (*e.g.*, Federal Express or paid courier service). Hand delivery shall not include delivery by electronic mediums such as facsimile or e-mail unless authorized by the Presiding Officer.

Facility means any “facility” described in M.G.L. c. 164, §69 G including:

- (a) any generating unit designed for or capable of operating at a gross capacity of 100 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities;
- (b) a new electric transmission line having a design rating of 69 kilovolts or more and which is one mile or more in length on a new transmission corridor;
- (c) a new electric transmission line having a design rating of 115 kilovolts or more which is ten miles or more in length on an existing transmission corridor except reconductoring or rebuilding of transmission lines at the same voltage;
- (d) an ancillary structure which is an integrated part of the operation of any transmission line which is a facility;
- (e) a unit, including associated buildings and structures, designed for, or capable of, the manufacture or storage of gas, except such units below a minimum threshold size as established by regulation;
- (f) a new pipeline for the transmission of gas having a normal operating pressure in excess of one hundred pounds per square inch gauge which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity; and
- (g) any new unit, including associated buildings and structures, designed for, or capable of, the refining, the storage of more than 500,000 barrels or the transshipment of oil or refined oil products and any new pipeline for the transportation of oil or refined oil products which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity.

Generating Facility means any generating unit designed for or capable of operating at a gross capacity of 100 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities.

Limited Participant means any person allowed to participate in an adjudicatory proceeding pursuant to M.G.L. c. 30A, § 10, and 980 CMR 1.05(2). A limited participant is not a party.

Party means an applicant, any person allowed to intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, § 1(3), and 980 CMR 1.05(1), or any person who intervenes in an adjudicatory proceeding by right.

Person means a natural person, partnership, corporation, association, society, authority, agency or department of the State, or any body politic or political subdivision of the State including municipal corporations.

1.02: Rules of General Applicability

- (1) Waiver of Rules. Where good cause appears, not contrary to statute, the Board and any Presiding Officer may permit deviation from any rules contained in 980 CMR.
- (2) Severability. If any provision of 980 CMR is held to be invalid, such invalidity shall not affect the provisions or the applications thereof not specifically held invalid.

1.03: General Procedures

- (1) Docket. A numbered docket shall be maintained for all adjudicatory proceedings and shall contain all documents filed in a proceeding and other relevant material.
- (2) Filing of Documents with the Board.
 - (a) Filing.
 - (i) Any document to be filed with the Board pursuant to 980 CMR 1.00 shall be hand delivered, or mailed first class, to the Energy Facilities Siting Board or to the Presiding Officer at the Energy Facilities Siting Board. The Presiding Officer may allow documents to be filed by other means.
 - (ii) A document shall be deemed to be filed on the date stamped "Received" by the Board or its agent during usual business hours. Documents received after usual business hours shall be deemed filed on the following business day.
 - (b) Filing Format.
 - (i) Printing Requirements. All documents filed for possible inclusion in the record shall be clear and legible and shall be presented in accordance with the standards established by the Presiding Officer.
 - (ii) Form. Every document filed shall contain a title which indicates the nature of the proceeding, the name of the applicant, and the docket number if available. The Director or Presiding Officer shall determine the number of copies to be filed. The Board may provide forms to be used for specific purposes by any person or party; in such cases, use of forms provided shall be mandatory.
- (3) Electronic Filing. The Presiding Officer may require documents to be filed electronically.
- (4) Service to Board, Parties and Participants.
 - (a) Service of a document upon the Board or the Presiding Officer shall be in accordance with 980 CMR 1.03(2).

- (b) Any person filing documents with the Board or Presiding Officer shall simultaneously serve a copy on all parties and limited participants required to be served in the proceeding, by hand delivery or by first class mail postage prepaid using the name(s) and address(es) stated on the service list issued by the Presiding Officer. The Presiding Officer may allow documents to be served by other means.
- (c) All documents filed with the Board or the Presiding Officer shall be accompanied by a statement certifying the date and means of service and the persons to whom service was made. Failure to comply with these rules may be grounds for the Board or Presiding Officer to refuse to accept documents for filing.
- (d) Documents shall be deemed served on the day of hand delivery or, if mailed, on the earlier of receipt or three days after mailing. The postmark shall be evidence of the date of mailing.

(5) Signatures. Every document filed pursuant to 980 CMR 1.03(2) or served pursuant to 980 CMR 1.03(4) shall be signed by the party making such filing or service or by his authorized representative. Such signature shall constitute certification by the signatory or his authorized representative that he has read the document, that, to the best of his knowledge, every statement contained in the document is true, and that the document is not being filed to delay the proceeding.

(6) Computation of Time. Unless otherwise specifically provided by 980 CMR 1.00 or by other applicable law, computation of any time period referred to in 980 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the Board is closed, in which case the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the office of the Board is closed shall be excluded.

(7) Extensions of Time. At the discretion of the Board or the Presiding Officer, for good cause shown, any time limit prescribed or allowed in 980 CMR may be extended. All requests for extensions of time must be made either by oral motion during a hearing or conference or by written motion. All requests for extensions of time must be made before the expiration of the original time period or before the expiration of any subsequent extension(s) granted. Provisions contained in 980 CMR 1.03(7) shall not apply to any limitation of time prescribed by statute, unless extensions are permitted by the applicable statute.

1.04: Institution of an Adjudicatory Proceeding

(1) Commencement of Proceeding. Proceedings may be initiated by a petition to construct, a petition for a certificate of environmental impact and public need, a petition for other matters over which the Board has jurisdiction, or the Board's own motion.

(2) Presiding Officer

- (a) A Presiding Officer shall be appointed to conduct each adjudicatory proceeding. The Presiding Officer shall have the authority to take all actions necessary to ensure a fair, orderly and efficient proceeding. Such actions may include, but are not limited to: conducting evidentiary and public comment hearings; ruling on petitions to intervene or to participate in a proceeding; establishing ground rules for a proceeding; holding procedural or other conferences; regulating the course of the hearing; prescribing the order in which evidence shall be presented; administering oaths and affirmations; examining witnesses and requiring them to produce evidence which will aid in the determination of any question of law or fact at issue; disposing of procedural requests or similar matters; hearing and ruling upon motions; issuing subpoenas; causing depositions to be taken; ruling upon offers of proof and receiving relevant material and probative evidence; fixing the time for filing briefs, motions and other documents in connection with hearing; and excluding any person from a hearing for disrespectful, disorderly, or contumacious language or conduct.
- (b) A Presiding Officer may at any time withdraw from a proceeding if he deems himself disqualified. Should a Presiding Officer withdraw, another Presiding Officer shall be appointed. Any party who becomes aware of grounds that may exist for the disqualification of a Presiding Officer must immediately file an affidavit which clearly sets forth the grounds for the disqualification.

(3) Notice of Adjudication

- (a) Notice shall be given at the beginning of any adjudicatory proceeding. The Presiding Officer shall give notice or shall require the applicant to give notice of an adjudication.
- (b) A notice shall set forth a summary statement of the matter to be adjudicated. The notice shall state: (1) the name and address of the applicant; (2) the address of the Board and the statement that any person desiring further information or wishing to participate in the proceeding may contact the Board; and (3) the date, time, and address of any scheduled public comment hearing.
- (c) In cases where a proposed facility is the subject of the proceeding, notice shall be given by publication in at least two newspapers available in the vicinity of the proposed facility and as otherwise ordered by the Presiding Officer. In cases where a proposed facility is not the subject of the proceeding, notice by publication shall be given as ordered by the Presiding Officer. Notice shall further be given by first class mail or hand delivery to any person required by law or regulation to be so notified and to such other persons as the Presiding Officer may direct. Additional notice or publication shall be made, if required by statute or regulation, in the manner prescribed therein. Unless otherwise directed by the Board or Presiding Officer, the applicant is responsible for all costs related to the publication and distribution of notice.
- (d) In cases where a proposed facility is the subject of the proceeding, the notice shall contain a deadline for the filing of petitions to intervene as a party or participate as a limited participant. This deadline shall be no less than 21 days

after the initial date of publication of the notice.

(e) In cases where a proposed facility is not the subject of the proceeding, the deadline for the filing of petitions to intervene as a party or participate as a limited participant shall be as ordered by the Presiding Officer.

(4) Repository of Documents. The Presiding Officer may require an applicant to place certain documents in one or more repositories to provide for public access to these documents. A repository of documents is a public library, public office, applicant's office, or similar location where documents involved in a particular proceeding may be kept and made available to members of the public. If a repository is required, the applicant shall be responsible for placing the documents therein and making adequate arrangements for convenient public access to the documents.

(5) Public Comment Hearing. When required by statute or otherwise determined appropriate by the Presiding Officer, the Board shall hold a public comment hearing. A public comment hearing shall be conducted to afford members of the general public an opportunity to comment on that matter. A public comment hearing shall be held as soon as practicable after the commencement of a proceeding. Comments made at a public comment hearing are not deemed to be evidence.

1.05: Intervention

(1) Parties.

(a) Any person who desires to intervene as a party in any proceeding shall file a written petition to intervene as a party. A petition to intervene as a party shall be deemed to constitute, in the alternative, a petition to participate as a limited participant under 980 CMR 1.05(2). If a petition to intervene is granted in the alternative as a petition to participate as a limited participant, the petitioner may participate as a limited participant without prejudicing any review on appeal of the denial of his petition to intervene.

(b) If a petitioner desires to intervene pursuant to M.G.L. c. 30A, § 10, the petition shall state the name and address of the petitioner, the manner in which the petitioner is substantially and specifically affected by the proceeding, the representative capacity, if any, in which the petition is brought, and how the petitioner intends to participate in the proceeding.

(c) If ten or more persons desire to intervene pursuant to M.G.L. c. 30A, § 10A, the petition shall state the names and addresses of the petitioners, the representative capacity, if any, in which the petition is brought, and the damage to the environment as defined in M.G.L. c. 214, § 7A that is or might be at issue. Intervention pursuant to M.G.L. c. 30A, § 10A shall be limited to the issue of damage to the environment and the elimination or reduction thereof in order that any decision in such proceeding shall include the disposition of such issue.

(d) The Presiding Officer shall rule on the petitions to intervene as a party and may condition any allowance of a petition on such reasonable terms as he may set.

(e) Persons who are granted leave to intervene as a party must comply with all

requirements of 980 CMR 1.00 and with all directives of the Presiding Officer. In addition, parties may be required to respond to discovery by the Presiding Officer and by other parties if allowed by the Presiding Officer after motion.

(f) Generally, the rights of a person who is granted leave to intervene as a party include the right to present witnesses, the right to cross-examine witnesses, the right to file a brief, the right to file comments on the tentative decision and the appellate status as a party in interest who may be aggrieved by any final decision. In addition, persons who are granted leave to intervene as a party may be afforded an opportunity to issue discovery and to present oral comments regarding the tentative decision under such conditions as the Board may provide.

(g) Except for an individual appearing *pro se*, all parties to a proceeding shall be represented by an attorney in good standing before the Massachusetts bar, unless the Presiding Officer grants a waiver of this requirement for good cause shown. A request for a waiver shall include: (1) an affidavit stating the good cause and naming a duly authorized representative; and (2) an affidavit by the duly authorized representative accepting the appointment and certifying that he will abide by the procedural rules set forth in 980 CMR and the Presiding Officer's directives.

(2) Participation.

(a) Any person who desires to participate as a limited participant in any proceeding shall make a written request for such status. Every request to participate as a limited participant shall describe the manner in which the petitioner is interested and his representative capacity, if any, and it shall state the contention of the petitioner and the purpose for which participation is requested.

(b) The Presiding Officer may grant leave to a person to participate as a limited participant and may condition any grant on such reasonable terms as he may set.

(c) Unless otherwise indicated, a limited participant's rights shall be limited to filing a brief and to filing comments on the tentative decision pursuant to 980 CMR 1.08(2). A limited participant may be afforded an opportunity to present oral comments regarding the tentative decision under such conditions as the Board may provide.

(d) Limited participants are not parties. Therefore, a grant of leave to participate as a limited participant in a proceeding, unless so stated, does not confer status as a party in interest who may be aggrieved by any final decision.

1.06: Conduct of Adjudication

(1) Procedural Conferences.

(a) The Presiding Officer may schedule a procedural conference, either on his own initiative or upon written request by a party.

(b) At a procedural conference the following matters may be considered:

- (i) the schedule for the proceeding;
- (ii) simplification and limitation of issues; and

- (iii) such other matters as will aid in the efficiency of the proceeding.
- (c) Unless the Presiding Officer has approved a stipulation to the contrary, statements made by any person at a procedural conference shall not be evidence in the proceeding or in any subsequent proceeding.

(2) Evidentiary Record. For every adjudicatory proceeding, there shall be an evidentiary record which shall include testimony as well as exhibits properly entered into evidence.

(3) Motions.

- (a) Any party may request that the Presiding Officer take any action by filing a motion which clearly states the order or action sought and the grounds therefor. Such a motion may either be made during a hearing or timely filed in writing. The Presiding Officer may require any oral motion made to be reduced to writing. A copy of all motions made in writing or reduced to writing shall be served upon all parties in accordance with 980 CMR 1.03(4).
- (b) Unless the Presiding Officer directs otherwise, a party may file a written response to a written motion with the Presiding Officer within seven days after such motion is filed. The moving party may then file a written reply within seven days after such response is filed. Additional filings will only be permitted at the discretion of the Presiding Officer.
- (c) A party may request a hearing on the motion at the time the motion is filed or with a response or reply filed timely in accordance with 1.06(3)(b). It is within the Presiding Officer's discretion to determine whether a hearing on the motion is necessary.
- (d) Motions, except motions seeking intervention, responses to motions and replies to motions may be filed only by parties.

(4) Evidence; Privileges.

- (a) All parties shall have the right to introduce both oral and documentary evidence. All witnesses shall testify under an oath administered by the Presiding Officer and shall be subject to cross-examination.
- (b) Evidence shall be submitted in accordance with the schedule established by the Presiding Officer. Generally, parties will be required to submit documentary evidence, including exhibits and written direct testimony, in advance of evidentiary hearing.
- (c) The Presiding Officer shall be guided by, but need not observe, the rules of evidence observed by the Massachusetts courts.
- (d) The Board shall observe the rules of privilege recognized by law.

(5) Discovery. Discovery is allowed at the discretion of the Presiding Officer.

- (a) Purpose. The purpose of discovery is to facilitate the hearing process by permitting the parties and the Board to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a

complete and accurate record is compiled.

(b) Rules Governing Discovery. In exercising his discretion, the Presiding Officer may be guided by the principles and the procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 *et seq.* These rules, however, shall be instructive, rather than controlling.

(c) Information Requests. After the commencement of an adjudicatory proceeding, a party may serve written information requests, as permitted by the Presiding Officer, for the purpose of discovering relevant information. A party may serve information requests only during the time specified by the Presiding Officer. The Presiding Officer may, at his discretion, serve written information requests on any party to the proceeding.

(d) Responses to Information Requests. Each information request shall be separately and fully answered under the penalties of perjury by the witness(es) who can testify during hearings regarding the content of the response, unless an objection to the information request with supporting reason is stated in lieu of a response. A response shall be served within 14 days of service of the information request, or within such other time as the Presiding Officer may specify. Responses shall be filed in the form specified by the Presiding Officer.

(e) Motions to Compel Discovery. A party may move for an order to compel compliance with its discovery request. Unless otherwise permitted by the Presiding Officer for good cause shown, such motion shall be made no later than seven days after the deadline for responding to the request. If the Presiding Officer finds that a party has failed to comply in a reasonable manner with a legitimate discovery request without good cause, he may, after issuance of an order compelling discovery, order whatever sanctions are deemed to be appropriate, including, but not limited to, suspending proceedings until the party has complied with the order or other appropriate sanctions listed in Rule 37 of the Massachusetts Rules of Civil Procedure. These rules, however, shall be instructive, rather than controlling. A party's failure to file a motion to compel discovery in a timely manner, absent a showing of good cause, may result in a waiver of its right to compel the response.

(f) Protective Orders. Upon a request for protective treatment of documents and a showing that a protective order is necessary, the Presiding Officer may make an order to protect any such document(s). The Presiding Officer may be guided by the principles and the procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 *et seq.* These rules, however, shall be instructive, rather than controlling.

(6) Evidentiary Hearings

(a) Purpose. Evidentiary hearings will be held when required by law or at the discretion of the Presiding Officer in order to allow Board staff and parties to examine witnesses with respect to the content of their pre-filed testimony and any responses to relevant information requests.

(b) Hearing Schedule. At least seven days prior to the first day of evidentiary hearings, the Presiding Officer shall notify all parties and limited participants, and

any persons whose petitions to intervene or participate are pending, of the hearing schedule. The hearing schedule shall include the times, dates, place, and nature of the hearings. There may be multiple hearing dates and times during the course of a proceeding. Hearing dates and times may change. It is the responsibility of each party and limited participant to keep abreast of all changes to the hearing schedule.

(c) Rescheduling. The Presiding Officer may grant a request to reschedule a hearing. A request for rescheduling should be made timely and in writing so as not to burden or delay the proceedings.

(d) Location. All evidentiary hearings shall be held at the Boston offices of the Board, unless a different location is designated by the Board or the Presiding Officer or a different location is required by statute.

(e) Public Access. All hearings of the Board shall be open to the public and the press to the extent required by law.

(f) Off The Record Discussions. The Presiding Officer may go off the transcribed record during the course of any hearing for consultation among the parties if the Presiding Officer deems that such consultation would facilitate the conduct of the hearing. In the absence of a stipulation to the contrary, statements made by any person during such consultation shall not be considered as evidence in the proceeding or any subsequent proceeding.

(g) Record Requests. During the course of evidentiary hearings, the Presiding Officer or parties may ask witnesses to provide documents or written responses to questions asked at the hearing. Responses to record requests are written substitutes to oral answers where fault of memory, complexity of subject or lack of immediate access to documentation precludes a responsive answer by the witness in the hearing. Upon proper filing, responses to record requests become part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery. The ordinary time for response will be seven calendar days following the day on which the request is made. Objections to record requests shall be made at the time the request is made, and in no event later than the end of the next business day.

(h) Transcript. The Presiding Officer shall arrange for the hearing to be reported by a court reporter. The transcript shall be included in the evidentiary record of the proceeding. The Presiding Officer has discretion to order expedited preparation of transcripts as the needs of the case may warrant. Any objections regarding the accuracy of the transcripts shall be brought to the attention of the Presiding Officer. Objections not raised within 30 days after the transcript is made available to the parties shall be deemed to be waived. If the accuracy of the reporting of witness testimony is in question, the Presiding Officer may require an affidavit of the witness who gave such testimony or may require further inquiry. The cost of the transcript preparation shall be the responsibility of the applicant. The cost of copies of the transcript shall be the responsibility of the person requesting the copies.

(7) Matters for Official Notice.

(a) Official notice may be taken in such matters as might be judicially noticed by the courts of the United States or of Massachusetts. The Presiding Officer also may take notice of general, technical, or scientific facts within the Board's specialized knowledge, provided that parties are afforded an opportunity to contest the matters of which official notice is to be taken.

(b) Official notice also may be taken of any facts found in any other Board proceeding. In all circumstances where such notice is taken, the parties shall be afforded an opportunity to contest the matter of which official notice is to be taken.

(c) Any party requesting that any fact be officially noticed must supply every party with a copy of the fact they are requesting to be noticed.

1.07: Post-Hearing

(1) Briefs. The Presiding Officer may set a schedule for the filing of briefs to be submitted by parties and limited participants. The purpose of briefs is to allow parties and limited participants to provide written argument based on the evidence properly entered into the record. Briefs also may be used to address specific briefing questions posed by the Presiding Officer. Briefs may not be used to submit new evidence.

(2) Oral Arguments. Oral argument at the close of a hearing may, upon motion, be allowed at the discretion of the Presiding Officer.

(3) Other Post Hearing Filings. No post-hearing filings other than those allowed for in 980 C.M.R. 1.07(1) may be made without the permission of the Presiding Officer.

1.08: Rendering of Decisions

(1) Form of Decisions. Every tentative and final decision shall be in writing and shall contain a statement of the reasons therefor, including a determination of issues of fact or law necessary to the decision.

(2) Tentative Decisions.

(a) A written tentative decision shall be issued on each matter adjudicated by the Board unless a quorum of the Board has heard the matter or has read the evidence.

(b) A copy of any tentative decision shall be sent to each party and limited participant in the proceeding. The Presiding Officer shall designate a comment period, extending at least seven days from the issuance of the tentative decision, during which parties and limited participants may file written comments regarding the tentative decision.

(3) Final Decisions.

(a) Every final decision of the Board in an adjudicatory proceeding shall be

issued following a vote taken at a meeting of the Board conducted pursuant to 980 CMR 2.04.

(b) If a tentative decision was issued in a matter, the Board shall meet following the comment period to vote on the tentative decision. At such meeting, parties and limited participants may be afforded an opportunity to present oral comments under such conditions as the Board may provide. The Board shall render a final decision after considering the tentative decision, all timely-filed written comments and any oral comments permitted. The Board need not consider written comments received after the close of the comment period.

(c) If a quorum of the Board has heard a matter, the Board may at its discretion render a final decision without first issuing a tentative decision pursuant to 980 CMR 1.08(2).

(4) Judicial Review. By the terms of M.G.L. c. 25, § 5, as made applicable to the Board by M.G.L. c. 164, § 69P, a party may seek judicial review of a final Board decision.

1.09: Supplemental Procedures

(1) Re-Opening Hearings. A party may, at any time before the Board renders a final decision, move that the hearing be reopened for the purpose of receiving new evidence. The motion should clearly show good cause for re-opening the hearing, state the nature and relevance of the evidence to be offered and explain why the evidence was unavailable at the time of the hearing.

(2) Consolidation. The Presiding Officer may order proceedings involving a common question of law or fact to be consolidated for hearing or decision on any or all of the matters at issue in such proceedings.

(3) Stipulations. At the discretion of the Presiding Officer, the parties may agree upon any fact or issue pertinent to the proceeding, either by filing a written stipulation at any point in the proceeding, or by making an oral stipulation at the hearing. In making findings, the Board need not be bound by any such stipulation.

(4) Technical Sessions. A technical session is an off-the-record meeting during which experts may provide detailed oral or written information in order to facilitate understanding of complex technical issues. The Presiding Officer may convene a technical session if he deems that such session would facilitate the conduct of the proceeding. The Presiding Officer shall permit representatives of the applicant, parties and limited participants to attend a technical session and shall make a reasonable effort to schedule and notice the time and place of any such session to permit attendance. In the absence of a stipulation to the contrary, statements made by any person during a technical session shall not be referred to or considered as evidence in the proceeding or in any subsequent proceeding. Board members, staff and parties may ask questions during a technical session.

- (5) Subpoenas. The Presiding Officer may issue, vacate or modify subpoenas, in accordance with the provisions of M.G.L. c. 30A, § 12.
- (6) Depositions. The Presiding Officer may at his discretion allow a deposition to be taken upon a showing that the person to be deposed cannot make an appearance at the hearing without substantial hardship and that the testimony being sought is significant, not privileged and not discoverable by an alternative means. If the Presiding Officer allows the taking of a deposition, the Presiding Officer shall specify the rules and procedures that will govern said deposition.
- (7) Reconsideration. Any party may file a written motion requesting the Presiding Officer reconsider a ruling as long as the motion is received within five days of the issuance of the ruling.
- (8) Offers of Proof. Any offer of proof made in connection with an evidentiary ruling shall consist of a statement, which may be in writing, of the substance of the evidence the party making the offer contends would be adduced by such testimony. If the offer of proof consists of documentary evidence, a copy of the document shall be marked for identification and shall constitute the offer of proof.
- (9) Site Visit of a Proposed Facility. The Board and staff may visit the proposed site and any alternative sites in order to facilitate an understanding of the pending matter. A site visit is for informational purposes only and shall not be considered as evidence in the proceeding.
- (10) Production or View of Objects. Of his own accord, or upon the motion of a party, the Presiding Officer may order the production or view of any object which relates to the subject matter of a proceeding.

REGULATORY AUTHORITY

980 CMR 1.00: M.G.L. c.164, § 69H.

980 CMR 2.00: GENERAL INFORMATION AND CONDUCT OF BOARD BUSINESS

Section

- 2.01: Purpose and Scope
- 2.02: Purpose and Functions of the Board
- 2.03: Board Membership
- 2.04: Meetings; Voting
- 2.05: Delegation of Duties; Board Staff
- 2.06: Action by Consent
- 2.07: Advisory Rulings
- 2.08: Determination of Board Jurisdiction

2.01: Purpose and Scope

- (1) Purpose. 980 CMR 2.00 describes the Energy Facilities Siting Board and establishes rules for the conduct of business.
- (2) Scope. 980 CMR 2.00 is of general applicability and applies, whenever appropriate, to all other sections of 980 CMR.

2.02: Purpose and Functions of the Board

- (1) Purpose of the Board. The Board has been established by M.G.L. c. 164, § 69H, as amended. The Board is responsible for implementing the energy policies contained in its enabling legislation in order to provide a reliable energy supply for Massachusetts with a minimum impact on the environment at the lowest possible cost. The powers and duties of the Board are enumerated in M.G.L. c. 164, § 69H.
- (2) Primary Functions of the Board. Matters reviewed by the Siting Board include petitions for:
 - (a) electric transmission lines
 - (b) electric generating facilities
 - (c) natural gas pipelines
 - (d) natural gas storage facilities
 - (e) oil refining, storage and transportation facilities
 - (f) hydropower generation facilities
 - (g) certificates of environmental impact and public need, or public interest.

The Board also has the authority to issue civil penalties to any applicant who violates an order of the Board.

- (3) Adjudicatory proceedings. The Board reviews the following matters which shall be resolved through adjudicatory proceedings in accordance with M.G.L. c. 30A and 980 CMR 1.00: a hearing on a petition to construct a facility held pursuant to M.G.L. c. 164, §§ 69J or 69J½; a hearing on an initial petition filed pursuant to M.G.L. c. 164, § 69K or

M.G.L. c. 164, § 69K½; a hearing on an Application for a Certificate filed pursuant to M.G.L. c. 164, § 69L or M.G.L. c. 164, § 69L½; and hearings on appeal under M.G.L. c. 164, § 69H½.

(4) Mailing List. The Board shall maintain a mailing list, shall place upon the list the name and address of any person or group so requesting, and shall give to such persons and groups written notice of activities of the Board for which notice may be appropriate. Failure to give notice to any person or group on the list shall not, in itself, render any act of the Board invalid. The Board may from time to time remove from the list persons or groups no longer expressing interest in receiving notices.

2.03: Board Membership

(1) Description of the Board. The Board comprises the Chairman and two additional Commissioners of the Department of Telecommunications and Energy, the Secretary of Environmental Affairs or his designee, the Director of Economic Development or his designee, the Commissioner of Energy Resources or his designee, and three public members appointed by the Governor for terms of three years, two of whom shall be experienced in environmental and consumer matters and one who shall be experienced in matters relating to the development of energy facilities. Where a designee is permitted, the designee shall be named in accordance with 980 CMR 2.03(3).

(2) Chairman. The Chairman of the Department of Telecommunications and Energy shall serve as the Chairman of the Board. In the event of the absence, recusal, or disqualification of the Chairman, the Director of Consumer Affairs and Business Regulations shall appoint an acting chairman from the remaining members of the Board.

(3) Designees. The Secretary of Environmental Affairs, the Director of Economic Development, and the Commissioner of Energy Resources each may nominate a designee to serve in his stead as a member of the Board. Nomination shall be made by a letter addressed to the Chairman and signed by the nominating official. The nominating letter shall state whether the nomination is general or limited. The nominating official may revoke a nomination at any time by letter to the Chairman.

Once nominated, a general designee shall assume all responsibilities of the nominating official pursuant to M.G.L. c. 164, §§ 69G-69S and 980 CMR 2.00. The nominating official may temporarily suspend a general nomination by appearing personally at a Board meeting or proceeding and performing the responsibilities of a Board member.

A limited designee shall assume only those responsibilities set forth in the nominating letter. The nominating official may retain and perform or may further name another designee to perform all other responsibilities.

(4) Compensation. Any public member appointed by the Governor shall receive compensation for his services in the amount allowable by law, and shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance

of his official duties.

(5) Effect of Board Actions. No action taken by the Board pursuant to 980 CMR 2.00 shall bind any member of the Board or any designee for the purposes of any responsibilities of such member or designee not solely related to the operation of the Board.

2.04: Meetings; Voting

(1) Public Meetings. All meetings of the Board shall be open to the public to the extent required by M.G.L. c. 30A, §§ 11A and 11A½. All meetings of the Board shall be open to the press to the extent required by law. The Board may establish specific policies regarding the use of video cameras and other recording devices as necessary.

(2) Notice of Public Meetings. Except in an emergency as provided by 980 CMR 2.04(3), a notice of each meeting of the Board shall be filed with the Secretary of State, and a copy thereof posted in the public office of the Executive Office for Administration and Finance, at least 24 hours, not including Saturdays, Sundays, or legal holidays, prior to the time of such meeting or session.

(3) Emergencies. The Board may conduct a public meeting or executive session without giving notice as required by 980 CMR 2.04(2), if it determines that an emergency exists and that immediate, undelayed action by the Board is imperative.

(4) Executive Sessions. The Board may in the course of a public meeting vote to go into executive session. An executive session may be held only as authorized by M.G.L. c. 30A, §§ 11A, 11A½.

(5) Records of Meetings. The Board shall maintain accurate records of its meetings, setting forth the action taken at each meeting, including executive sessions. Either a full transcript of the meeting or a summary of all matters voted shall be made available with reasonable promptness after each meeting; provided, however, that votes taken in executive session may be withheld from public disclosure for so long as their publication would defeat the lawful purposes of the executive session, but no longer.

(6) Quorum; Voting.

(a) A quorum consisting of four Board members shall be required to conduct any meeting of the Board held for the purpose of considering and voting upon an adjudicatory decision, or a proposal to adopt, amend or rescind regulations, or any other matter requiring a vote of the Board. A majority of members in attendance at a meeting shall be sufficient to dispose of any question properly before the Board during the meeting at which the question is taken up.

(b) Each Board member or designee in attendance at a meeting shall be entitled to vote on any matter which is properly before the Siting Board at that meeting.

2.05: Delegation of Duties; Board Staff

- (1) Delegation of Duties. The Board may delegate Board-specific responsibilities other than responsibility for the final decision in any matter listed in 980 CMR 2.04(6)(a) to the Chairman or to the Board staff. The facility siting division of the Department of Telecommunications and Energy shall serve as staff to the Board.
- (2) Director. The Director shall be appointed pursuant to M.G.L. c. 25, § 12N to direct the work of the facility siting division of the Department of Telecommunications and Energy and to conduct the day-to-day business of the Board. The Board or the Chairman may delegate to the Director Board-specific responsibilities other than the responsibility for the final decision in any matter listed in 980 CMR 2.04(6)(a).
- (3) Staff. The Chairman may appoint such other persons to the facility siting division staff as may be required to assist the Board in performing its functions. Staff functions shall include, among others: conducting adjudicatory, rulemaking, or factfinding hearings for the purpose of creating a record; rendering tentative decisions; and intervening in the proceedings of other agencies. The Chairman may authorize the Director to appoint a Presiding Officer for an adjudicatory or other proceeding conducted under 980 CMR.

2.06: Action by Consent

- (1) Scope. Any decision of the Board, except the final decision in any adjudicatory proceeding, may be made by action by consent pursuant to the procedures of 980 CMR 2.06. These procedures shall be used only when the Board, in its discretion, determines that expeditious action is necessary.
- (2) Procedure. The Chairman shall prepare a document entitled "Action by Consent" which sets forth the decision proposed to be taken by the Board. The document or copies thereof shall be presented to each member of the Board for review. A member may indicate consent by affixing his signature to the document or copy. The proposed action by consent shall be deemed to have been taken when the document and copies bearing the signatures of all Board members are returned to the Chairman. A proposed action by consent shall become void if it does not receive all required signatures before the beginning of any meeting of the Board held pursuant to 980 CMR 2.04.
- (3) Notice.
 - (a) Except in an emergency, a notice of each proposed "Action by Consent" shall be filed with the Secretary of State, and a copy thereof posted in the public office of the Executive Office for Administration and Finance at least 24 hours, not including Saturdays, Sundays and legal holidays, prior to the circulation of such proposed decision to Board members for signature.
 - (b) The notice shall state:
 - (i) that the notice is for an action proposed to be taken by unanimous written consent of the Board rather than by meeting;

- (ii) that the proposed action by consent shall become void if not signed by all Board members prior to the next meeting of the Board; and
 - (iii) the full and complete text of the proposed action by consent, or, if the proposed action by consent consists of more than 200 words, a summary of its terms and a statement that the full text may be obtained at the offices of the Board.
- (c) For the purpose of 980 CMR 2.06, "emergency" shall mean a situation in which immediate action without delay is deemed by the Board to be imperative.

(4) Records of Actions by Consent. The Board shall maintain accurate records of all proposed actions by consent. A record of the Board's action on a proposed action by consent shall be made available with reasonable promptness after its approval by all Board members or after it becomes void.

2.07: Advisory Rulings

Any person may at any time request, via written petition, an advisory ruling with respect to the applicability of any statute or regulation enforced or administered by the Board to any person, property or factual situation. A petition shall be signed by the applicant, shall contain the applicant's address, and shall state clearly and concisely the substance or nature of the request. The petition shall be accompanied by any supporting data, views or arguments. Upon receipt of the petition, the Board shall consider it and shall, within 60 days after the receipt of the request, notify the applicant either that the request is denied or that the Board will render an advisory ruling. In order to assist the Board in considering the request, the Director may require additional information as he deems appropriate. At any time before issuance of an advisory ruling, the Board may rescind a decision to render an advisory ruling. If the advisory ruling is rendered, a copy of the ruling shall be sent to the applicant. A complete record of every advisory ruling shall be maintained by the Board. No advisory ruling shall bind or otherwise estop the Board in any pending or future matter. There shall be no obligation to render an advisory ruling.

2.08: Determination of Board Jurisdiction

- (1) An applicant may at any time petition the Board for a determination of whether construction, expansion, or other modification of a proposed electric generating unit, electric transmission line, ancillary structure, natural gas pipeline, natural gas storage facility, oil pipeline, oil refinery, oil storage facility, oil transshipment facility or other facility is subject to Board jurisdiction, is not subject to Board jurisdiction, or may qualify for a Certificate pursuant to 980 CMR 6.00.
- (2) The petition shall state the name of the applicant and describe the nature of the facility for which a determination is being sought. The petition shall be accompanied by a draft legal notice for publication and such written legal argument or other information as the applicant may consider appropriate. The Board may require that the applicant provide additional information after the petition is filed.
- (3) The applicant shall give notice of the petition by publishing the legal notice

approved by the Presiding Officer in at least one newspaper of general circulation and as otherwise ordered by the Presiding Officer. The notice shall specify that any person may submit written legal argument or other information regarding the petition. The notice shall specify the deadline for such submissions, which shall be not less than 14 days after the initial date of publication.

(4) Within four months of the petition filing date, the Board shall issue a final decision on jurisdiction. The final decision shall address only those issues necessary to decide the extent to which a proposed facility is within Board jurisdiction, is not subject to Board jurisdiction, or may qualify for a Certificate pursuant to 980 CMR 6.00. The Board's decision shall be final.

REGULATORY AUTHORITY

980 CMR 2.00: M.G.L. c. 164, § 69H.

980 CMR 4.00: FREEDOM OF INFORMATION; PROTECTION OF TRADE SECRETS

Section

- 4.01: General
- 4.02: Access to Information
- 4.03: Exempt Information
- 4.04: Methods or Processes Entitled to Protection
- 4.05: Introduction of Confidential Information in Adjudicatory Proceedings

4.01: General

- (1) Purpose. The purpose of 980 CMR 4.00 is to provide for free public access to all records of the Council with certain exceptions. Exceptions shall be construed strictly and narrowly. The purpose of 980 CMR 4.00 is also to provide protection for certain trade secrets, where such protection is both appropriate and provided for by law.
- (2) Scope. 980 CMR 4.00 shall apply to all records of the Council including all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any member of the Council in her or his official capacity or by any employee of the Council.
- (3) Statutory Authority. 980 CMR 4.00 is promulgated pursuant to M.G.L. c. 4, § 7; c. 66, § 10; c. 164, § 69H; and c. 164, § 69L.
- (4) Definitions. For purposes of 980 CMR 4.00, the definitions set forth in 980 CMR 2.03(3) apply, unless the context or subject matter requires a different interpretation.
- (5) Application of 980 CMR 2.00. 980 CMR 2.00 shall apply to 980 CMR 4.00 except to the extent that 980 CMR 2.00 and 4.00 are in conflict. In the event of a conflict, 980 CMR 4.00 shall prevail.

4.02: Access to Information

- (1) Right to Information. Any person shall be allowed access to any record of the Council unless the record is exempted by 980 CMR 4.03(1) or protected by 980 CMR 4.04(1).
- (2) Procedure.
 - (a) A person seeking access to records of the Council should request access in person at the offices of the Council (100 Cambridge Street, Boston, Massachusetts 02202, Room 2109), by telephone (617-727-1136), or by first class mail.
 - (b) No charge shall be made for inspection of records.
 - (c) The Council may require a person desiring copies of any record to pay in

advance the actual cost of preparing such copies.

(d) Any person not satisfied with the access provided pursuant to 980 CMR 4.02(2)(a) should prepare a written request for inspection or copy of a public record pursuant to M.G.L. c. 66, § 10. The request should be delivered in hand or mailed via first class mail, certified, return receipt requested, to the Chairman at the offices of the Council, Room 2109, 100 Cambridge Street, Boston, Massachusetts 02202.

(e) If the Chairman refuses or fails to comply with a request made pursuant to M.G.L. c. 66, § 10 within 20 days after receipt of the said request, the person requesting access may resort to the courts as set forth in said M.G.L. c. 66, § 10.

4.03: Exempt Information

(1) General Principles. Records which are exempted by 980 CMR 4.03(2) shall not be made available to the public. Only that part of a record which comes within an exemption shall not be made available. Those parts of a record which are not exempt shall be made available through the procedures of 980 CMR 4.02(2) provided that the Council may require a person seeking access to information to pay the actual cost of separating exempt from non-exempt information.

(2) Exemptions. Records shall not be made available to the public if they are within any of the enumerated exemptions in the 26th clause of M.G.L. c. 4, § 7.

4.04: Methods or Processes Entitled to Protection

(1) General. An applicant for a Certificate of Environmental Impact and Public Need or any other person may assert that any information obtained by or submitted to the Council in connection with an application for a Certificate relates to methods or processes entitled to protection as a trade secret.

The procedures of 980 CMR 4.04 shall also be available to any person in connection within any other type of proceeding before the Council, including forecast and supplement proceedings pursuant to 980 CMR 7.00 and proceedings relating to a Notice of Intention filed pursuant to 980 CMR 8.00. The procedures shall also be available for any information sought to be protected under any of the exemptions referred to in 980 CMR 4.03(2).

Any person or party submitting a document or record to the Council for any purpose other than for purposes of a determination as provided in this Part and seeking protection of the confidentiality of such document or record pursuant to this Part, must petition the Council as provided by 980 CMR 4.04(2) at least 30 days before submission. The requirement of the prior sentence shall not apply to information submitted pursuant to a request of the Council or of a party, provided that the person or party seeking protection of the document or record waives the right of withdrawal provided by 980 CMR 4.04(4).

(2) Petition. Such applicant or person shall present a written petition to the Council.

The petition shall:

- (a) Include a complete copy of all documents sought to be protected;
- (b) State the reasons why the Council should protect the information in such detail as shall enable the Council to reach a decision; and
- (c) Include a copy of all documents sought to be protected, edited to exclude only the precise information sought to be protected.

(3) Decision. The Council shall render a decision on such a petition within thirty (30) days after its receipt. The Council shall find that a document or a part thereof shall be protected if a majority of the Council so agree. If the Council so finds, it shall direct the Chairman not to disclose the said document or part thereof, except to Council members, the Council staff, parties determined pursuant to 980 CMR 1.05(2), and other governmental agencies concerned with matters raised by the relevant proceeding. The Council shall further direct the Chairman to require such persons and agencies not to disclose such information.

(4) Temporary Protection; Withdrawal. Pending a decision on a petition pursuant to 980 CMR 4.04(2), the Council shall temporarily protect a document and treat it as if it were entitled to be kept completely confidential.

Any applicant for a Certificate may submit a document to the Council for the sole purpose of determining whether it is entitled to protection by so stating and petitioning at the time of submission. The applicant may then withdraw the document immediately after the Council's decision; in the event of withdrawal, the Council may not reveal the information in the document or consider it for any purpose.

If the Council finds that a document shall be protected and if the document is not withdrawn, the Council shall be bound by any subsequent judicial decision pursuant to M.G.L. c. 66, § 10, that the document must be made public.

4.05: Introduction of Confidential Information in Adjudicatory Proceedings.

(1) General Purpose. If any information is determined pursuant to 980 CMR 4.04 to consist of trade secrets or other matter entitled to protection or is exempt from public access for any other reason, it may be introduced into evidence in an adjudicatory proceeding by a party under the provisions of 980 CMR 4.05.

(2) Procedures for Introduction of Confidential Information.

- (a) The party seeking to introduce confidential information must first satisfy the Council that the information consists of trade secrets or other matters entitled to protection or is exempt from public access.
- (b) Every party shall be entitled to hear or review confidential information and, as appropriate, to cross-examine witnesses, to object to the introduction of evidence, and to exercise all other rights available to a party.
- (c) The Council shall take such measures and issue such orders as may be appropriate and necessary to protect the confidentiality of information and to preserve the rights of all parties. Such measures may include the exclusion of the

public from portions of hearings and the separate and protected filing of portions of transcripts and items of evidence. Such orders may include orders that parties and their counsel not reveal confidential information to any other person.

(d) Any party may without prejudice to any rights elect not to hear or review confidential information.

REGULATORY AUTHORITY

980 CMR 4.00: M.G.L. chs. 4, 5, 7, c. 66, § 10; c. 164, §§ 69H and 69L.

980 CMR 5.00: ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL IMPACT ENERGY FACILITIES SITING COUNCIL

Section

5.01: General

5.02: Environmental Assessment

5.01: General

- (1) Scope. 980 CMR 5.00 governs the application of the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62H to proceedings of the Energy Facilities Siting Council.
- (2) Statutory Authority. 980 CMR 5.00 is promulgated pursuant to the authority of M.G.L. c. 164, § 69H, 69H½, and 69I.

5.02: Environmental Assessment

- (1) Environmental Assessment and Impact Reports. During the course of its review of long-range forecasts, supplements, and notices of intent, the Siting Council is not required to comply with the procedural requirements of the Massachusetts Environmental Policy Act. *See* M.G.L. c. 164, § 69I. Nevertheless, the Council shall comply in all of its proceedings with the environmental policies of the Commonwealth as these are set forth in Article 49 of the Constitution, M.G.L. c. 30, § 61, and environmental statutes and regulations.

The Siting Council shall comply with procedural and substantive requirements of M.G.L. c. 30, §§ 61-62H and implementing regulations of the Executive Office of Environmental Affairs in all of its rulemaking proceedings pursuant to Chapter C of its regulations.

An applicant for a certificate of environmental impact and public need pursuant to Chapter F of 980 CMR 5.00 shall comply with the procedural and substantive requirements of M.G.L. c. 30, §§ 61-62H and implementing regulations of the Executive Office of Environmental Affairs.

REGULATORY AUTHORITY

980 CMR 5.00: M.G.L. c. 164, §§ 69H, 69H½, and 69I.

980 CMR 6.00: CERTIFICATION OF ENVIRONMENTAL IMPACT AND PUBLIC NEED

Section

- 6.01: General
- 6.02: Initial Petition
- 6.03: The Application
- 6.04: Conduct of Hearings
- 6.05: Council Decisions
- 6.06: Emergencies

6.01: General

(1) Scope. 980 CMR 6.00 shall apply to complaints to the Council from the actions of other state and local agencies. Such complaints are provided for by M.G.L. c. 164, ss. 69K-690 and are entitled applications for Certificates of Environmental Impact and Public Need.

(2) Statutory Authority. 980 CMR 6.00 is promulgated pursuant to M.G.L. c. 164, ss. 69H, 69K-690.

(3) Definitions. For purposes of 980 CMR 6.00 the definitions set forth in 980 CMR 1.03(3) and 6.01(3) apply, unless the context or subject matter requires a different interpretation.

Applicant means an electric, gas or oil company which is authorized pursuant to 980 CMR 6.02(4) to file an application.

Application means an application for a Certificate.

Certificate means a Certificate of Environmental Impact and Public Need.

Final decision means an action by a state or local agency which is subject to judicial review pursuant to M.G.L. c. 30A, § 14 or pursuant to any other general law or statute of the Commonwealth.

Subject Facility means the facility which is the subject of an initial petition or application.

Permit means a permit, license, approval, certificate, consent or other permission required for an applicant to construct, operate or maintain a facility.

(4) Application of 980 CMR 1.00 and 2.00. 980 CMR 1.00 and 2.00 shall apply to 980 CMR 6.00 except to the extent that 980 CMR 1.00, 980 CMR 2.00 and 980 CMR 6.00 are in conflict. In the event of a conflict, 980 CMR 1.00 shall prevail over 980 CMR

2.00 and 980 CMR 6.00 shall prevail over 980 CMR 1.00 and 2.00.

6.02: Initial Petition

(1) Basis for Petition. Any electric, gas or oil company which proposes to construct or operate a facility may petition the Council for a Certificate of Environmental Impact and Public Need with respect to such facility. Such initial petition shall assert one or more of the grounds set forth in 980 CMR 6.02(2).

No petition asserting grounds specified in 980 CMR 6.02(2)(a), 6.02(2)(c), 6.02(2)(d), 6.02(2)(e), and 6.02(2)(f) with respect to the action of a state or local agency shall be brought until a final decision has been rendered by the agency in question. No petition asserting such grounds with respect to an action of a local agency shall be brought until the petitioner has exhausted any appeal to a state agency provided by statute.

A petitioner complaining of the final decision of an agency shall prepare and provide a full record of such agency decision. Where adjudicatory proceedings have been conducted, the petitioner shall request that the agency issue findings of fact and conclusions of law and shall provide these to the council.

(2) Grounds for Petition.

(a) The company may assert that it is prevented from building a subject facility because it cannot meet standards imposed by a state or local agency with commercially available equipment.

(b) The company may assert that it is prevented from building a subject facility because the processing or granting by a state or local agency of any permit has been unduly delayed. In determining whether undue delay has occurred, the Council may consider the amount of time normally required by the agency or similar agencies to resolve issues of similar complexity and importance, and whether the delay is due to the failure of the company to supply information to the agency necessary for processing or granting the permit. No petition shall be heard pursuant to this subsection until at least thirty (30) days after the company has notified the agency by certified mail that it intends to submit a petition to the Council.

(c) The company may assert that it believes there are inconsistencies among resource use permits issued by state or local agencies. In reviewing the initial petition, the Council may determine whether the belief is reasonable.

(d) The company may assert that it believes that a non-regulatory issue or condition has been raised or imposed by a state or local agency. A non-regulatory issue or condition relates to matters not within the statutory jurisdiction of the agency in question. In reviewing the initial petition, the Council may determine whether the belief of the company is reasonable.

(e) The company may assert that a state or local agency has imposed a burdensome condition or limitation on any permit which has a substantial impact on the Council's responsibilities. The Council may consider a condition or limitation to be burdensome if the resulting cost would be out of proportion to the

cost of the facility or to the benefits to be gained from the condition or limitation. The denial of a permit may constitute a burdensome condition or limitation.

(f) The company may assert that a subject facility cannot be constructed due to disapproval, condition or denial by a local government. This subsection shall not apply to lands or interests therein, excluding public ways, owned or managed by any state agency or local government. This subsection shall not be construed to give the Council authority to override any zoning by-law in effect on the date when a notice of intention is filed as provided by 980 CMR 8.02(1).

(3) Form of Initial Petition; Notice. An initial petition shall be an initial pleading in the form required by 980 CMR 1.03(4). The petition may include such attachments as the petitioning company deems useful. The petitioning company shall be required to give notice as provided in 980 CMR 1.03(2).

(4) Action on the Initial Petition. Upon receipt of an initial petition, the Council or Chairman shall within seven days determine whether to hold a separate hearing on the grounds asserted in the petition or to accept an application pursuant to 980 CMR 6.03(1), and to defer decision on the merits of the grounds asserted in the initial petition until the hearing on the application.

A separate hearing, if held, shall be an adjudicatory proceeding and shall be subject to 980 CMR 1.00. After determining pursuant to 980 CMR 6.00 that a separate hearing on grounds should be held, the Council shall immediately schedule a hearing to be held no more than 30 days after the date notice is given pursuant to 980 CMR 6.02(3). The Council shall render a decision no more than 14 days after the conclusion of the hearing. Should the Council determine that valid grounds do not exist, its ruling shall be immediately appealable.

6.03: The Application

(1) Basis for the Application. If an initial petition filed pursuant to 980 CMR 6.02(1) is granted or if a decision on a petition is deferred as provided by 980 CMR 6.02(4), the petitioning company may file an application for a Certificate of Environmental Impact and Public Need. In any event the initial petition and application shall be given the same docket number. Each separate facility shall require a separate application. The Council may in its discretion consider applications in a single proceeding.

When adjudicatory findings of fact in the context of a final decision made by an agency within the statutory jurisdiction of said agency are challenged by an application, review by the Council of said findings shall be limited to the record presented before the agency; provided, however, that the Council may modify the agency findings of fact or substitute its own findings therefore if the Council determines that said agency findings are:

- (a) In excess of the statutory authority or jurisdiction of the agency;
- (b) Unsupported by substantial evidence;
- (c) Arbitrary or capricious or an abuse of discretion; or
- (d) Not sufficient to permit adequate Council review of the application

pursuant to the Council's obligation to insure a necessary energy supply at the lowest possible cost with a minimum impact on the environment.

Any party wishing to challenge agency findings of fact shall specify which of grounds 980 CMR 6.03(1)(a) through 6.03(1)(d) above, is relied upon and shall state the substance of his claim, including citations to the portions of the agency record he relies upon.

In such cases, the Council may take evidence itself or remand questions of fact to the agency for further proceedings, consistent with the time limits set forth in M.G.L. c. 164, ss. 69K-69O.

In reviewing facts found by an agency, the Council shall give due weight to the experience, technical competence and specialized knowledge of the agency. Nothing in this section is intended to limit the authority of the Council to decide questions of fact not raised or decided in the context of the final decision of the agency.

(2) Notice; Service. The applicant shall at least seven days prior to the date of filing an application give notice to the Council by filing a notice as set forth in 980 CMR 1.02(2), to the agency complained of by first class mail, to such persons as are entitled to notice under M.G.L. c. 164, § 69L, para. B(1) by first class mail, and by publication in two newspapers of general circulation in the vicinity of the subject facility. The notice shall state the name and address of the applicant, the date on which the application will be filed, the name, location of and a description of the subject facility, the name or names and address or addresses of the agency or agencies complained of, the relief sought, the full name, address and telephone number of the Council, and the date when the application will be filed. The notice shall further bear the following statement:

"Persons desiring additional information should contact the Siting Council at the above address or telephone number. Persons wishing to be admitted as parties in interest to proceedings on the application should present a petition to the Council no later than ()."

In place of the parentheses should be inserted the date which is 30 days after the date of filing of the application. Finally, the notice should bear the following statement:

"A copy of the application may be inspected at the offices of the Siting Council, set forth above, or at ()." In place of the parentheses should be placed the name, address, and telephone number of a repository of documents chosen pursuant to 980 CMR 2.03(4).

The applicant shall insure that both the Council and a repository of documents possess complete copies of the application before giving notice. The repository shall be within a city or town containing the subject facility or within an adjacent city or town.

Failure to give service or notice as required by 980 CMR 6.03(2), may be cured by the Council upon motion by the applicant. The Council may, as a condition of granting the motion, require the applicant to consent to such measures as are necessary and appropriate in order to insure full and adequate participation and review by the public and agencies, including but not limited to waiving the limitation upon standing set forth in 980 CMR 1.05(2)(f) and delaying or reopening a hearing without regard to the time limitations set forth in any rule or statute.

(3) Form of Application. An application for a Certificate shall contain the following information:

- (a) In the case of an electric and gas company a copy of each long-range forecast and supplement in which the subject facility or its site was proposed, or, in the case of an oil company, a copy of an approved Notice of Intention;
- (b) A copy of the most recent approved long-range forecast, and a copy of all approved supplements thereto;
- (c) A copy of any forecast or supplement currently under consideration by the Council, but not yet approved;
- (d) One or more 1:24,000 scale United States Geologic Survey (USGS) topographical maps with transparent overlays showing the boundaries of the site and the precise location of the subject facility. Additional USGS maps shall be provided if they depict land or waters within 8,000 feet of the site.
- (e) Such other maps as may be appropriate;
- (f) A detailed description of and plans for the subject facility;
- (g) Photographs of the site and, if relevant, of the facility. (The photographs shall be accompanied by a description of the camera or cameras and lens or lenses used and by a map showing the points from which and direction in which the photographs were taken);
- (h) Aerial photographs of the site;
- (i) A copy of each study which the applicant has made of the environmental impact of the subject facility;
- (j) A statement of the reasons for the choice of the location;
- (k) A complete list of all licenses, permits and other regulatory approvals already obtained for the subject facility;
- (l) A complete list of all other licenses, permits and approvals expected to be required for the subject facility. (The applicant shall indicate whether applications have been made and, if so, their status);
- (m) A statement setting forth the applicant's need for a Certificate. (The applicant shall state which permit is sought from the Council and shall state the grounds for Council jurisdiction as set forth in 980 CMR 6.02(2). Two or more permits may be sought in one application, if valid grounds exist for each);
- (n) A copy of every decision by and study by the agency or agencies complained of concerning the subject facility;
- (o) If the subject facility is not included in a long-range forecast or supplement approved by the Council or is not the subject of an approved Notice of Intention, extensive evidence of future demand; and
- (p) Such other information as the applicant deems relevant.

(4) Affidavit. Each application for a Certificate shall be accompanied by an affidavit that notice has been given as required by 980 CMR 6.03(2).

(5) Fees. Each application shall be accompanied by payment of a fee as herein provided, but in no event less than \$5,000.

- (a) For an electric Generating Plant, the fee shall be \$.04 per rated kilowatt electric of capacity, plus \$1,000 per ancillary substation, but in no event more than \$25,000.
- (b) For an electric transmission line, the fee shall be \$.001 per rated volt of capacity per mile for that part of the line proposed for a new right of way, plus \$.0005 per rated volt per mile for that part of the line proposed for an existing right of way, plus \$1,000 per ancillary substation, but in no event more than \$25,000.
- (c) For a gas pipeline, the fee shall be \$.00003 per rated pound per square inch of pressure capacity per cubic foot of volume contained for that part of the line proposed for a new right of way, plus \$.000015 per rated pound per square inch of pressure capacity per cubic foot of volume contained for that part of the line proposed for an established right of way, but in no event more than \$25,000.
- (d) For a gas storage facility, the fee shall be \$.01 per rated million BTU's of capacity, but in no event more than \$25,000.
- (e) For a gas manufacturing plant, the fee shall be \$1.00 per rated million BTU's per day of capacity, but in no event more than \$25,000.
- (f) For an oil refinery, the fee shall be \$.25 per rated barrel per day of throughput capacity, but in no event more than \$25,000.
- (g) For an oil storage or transshipment facility, the fee shall be \$.005 per rated barrel of storage capacity, but in no event more than \$25,000.
- (h) For an oil terminal intended to handle water-borne shipments, the fee shall be \$.03 per rated barrel per day of throughput capacity, but in no event more than \$25,000.
- (i) For an oil pipeline, the fee shall be \$.10 per cubic foot of volume contained for that part of the line proposed for a new right of way, plus \$.05 per cubic foot of volume contained for that part of the line proposed for an established right of way, but in no event more than \$25,000.

If two or more permits for a single facility are sought in a single application, only one fee shall be charged. If two or more applications are filed in regard to a single facility, the fee for the second and each subsequent application shall be one-half of the fee for the first application.

(6) Amendment of Application. An application may be amended by the applicant at any time prior to the entry of a final decision on the application by the Council. The Council shall take such measures as are necessary and appropriate to insure reasonable notice to parties, participating persons, persons entitled to notice pursuant to M.G.L. c. 164, § 69L, para. B(1), state and local agencies, and the general public. The Council may take such measures as are necessary and appropriate in order to insure full and adequate participation and review by the public and agencies, including but not limited to treating the amendment as a new initial petition or a new application for purposes of standing pursuant to 980 CMR 1.05(2)(f), for purposes of notice pursuant to 980 CMR 6.03(2), for purposes of the fee requirements of 980 CMR 6.03(5), and for purposes of the time deadline set forth in 980 CMR 6.05(1).

(7) Consolidation of Issues. To the extent that adequate grounds can be asserted pursuant to 980 CMR 6.02(2) and to the extent permitted by statute or 980 CMR 6.00, companies are encouraged to consolidate issues relating to more than one permit or agency in a single application.

6.04: Conduct of Hearing

(1) The Date of the Hearing. The Council or the Chairman shall set a time and place for an adjudicatory hearing after receipt of a complete application.

(2) Informational Hearing. The Council may conduct non-adjudicatory hearings in the vicinity of a subject facility after the filing of the application and before commencement of the adjudicatory hearing.

(3) Notice of Hearing; Written Comments. Notice of the hearing shall be provided as required by 980 CMR 1.03(3).

(4) Additional Information. The Council may during the course of any hearing held pursuant to this Chapter require the submission of such additional information and exhibits as the Council deems useful.

6.05: Council Decisions

(1) Time Limit. The Council shall vote a final decision no later than six months after the date of filing of an application.

(2) Lack of Majority. If a majority of Council members participating in the votes cannot be obtained for denying the application, granting the application, or granting the application subject to terms and conditions, the application shall be considered denied. Such a denial may be treated by the applicant at its option as a denial without prejudice to its right to file another initial petition in regard to the same matter or as a final agency action entitling it to judicial review.

(3) Form of Certificate. A decision shall be in writing and shall set forth its basis in law and fact. It shall include specific findings and opinion with regard to:

(a) The need for the facility to meet the energy requirements of the applicant's market area taking into account wholesale bulk power, gas or oil sales or purchases or other cooperative arrangements with other utilities or oil companies and energy policies as adopted by the Commonwealth;

(b) The compatibility of the facility with considerations of environmental protection, public health and public safety;

(c) The extent to which construction and operation of the facility will fail to conform with existing state and local laws, ordinances, bylaws, rules and regulations and reasonableness of exemption thereunder, if any consistent with the implementation of the energy policies contained in this act to provide a necessary

energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost; and

(d) The public interest, convenience and necessity requiring construction and operation of the facility.

The Council shall state the extent to which the decision is or is not based upon the above findings and opinion.

If the application is granted, the Council's decision shall constitute a Certificate of Environmental Impact and Public Need. If the application relates to more than one permit, the Council may issue a Certificate with regard to all such permits or less than all. When issued, a Certificate shall serve in lieu of the permit in question.

The Certificate may, according to its terms, authorize the applicant to construct, operate or maintain a facility. It shall be sufficient to serve in lieu of the permit required from the agency complained of. The applicant shall not be required to reapply for the permit to the agency complained of, nor may the agency complained of impose or enforce any law, ordinance, by-law, rule or regulation in conflict with the terms of the Certificate.

(4) Amendment of a Certificate. Any party to a Certificate proceeding or aggrieved person may make application for amendment of a Certificate within thirty (30) days after the granting of the Certificate, the application shall be made in the form of a motion pursuant to 980 CMR 1.04(3).

The Council may within 30 days after the motion deny the motion or schedule a hearing on it. If a hearing is scheduled, the Council shall take such measures as are necessary to insure full and adequate notice to, participation by and review by parties, the public and agencies.

(5) Federal Pre-emption. The Council shall not issue a Certificate the effect of which would be to grant or modify a permit which, if so granted or modified by the agency appealed from would be invalid because of a conflict with applicable federal laws and regulations.

(6) National Pollutant Discharge Elimination System Permit. If an application for a Certificate involves a National Pollutant Discharge Elimination System Permit, the applicant and the Council shall, in addition to complying with 980 CMR 6.00 and 980 CMR 1.00, comply fully with all requirements of M.G.L. c. 164, s. 69M.

6.06: Emergencies

(1) Definitions. For purposes of 980 CMR 6.06 "emergency" means an accident, act of God or unforeseen condition which jeopardizes the health and safety of the public.

(2) Waiver of Requirements. When an emergency exists or has occurred, the Council may grant a Certificate to a company without requiring that the subject facility have been included in an approved long-range forecast or supplement or that a Notice of Intention have been approved by the Council.

REGULATORY AUTHORITY

980 CMR 6.00; M.G.L. c. 164, §§ 69H, 69K-69O.

980 CMR 7.00: LONG-RANGE FORECASTS AND SUPPLEMENTS

Section:

- 7.01: General Provisions
- 7.02: Procedures
- 7.03: Demand Forecasts by Electric Companies
- 7.04: Supply Plans of Electric Companies
- 7.05: Annual Supplements by Electric Companies
- 7.06: Demand or Sendout Forecasts by Gas Companies
- 7.07: Supply Plans of Gas Companies
- 7.08: Annual Supplements by Gas Companies
- 7.09: Forecast Requirements

7.01: General Provisions

(1) Scope and Purpose. 980 CMR 7.00 sets forth the procedures for the filing of and requirements for the content of long-range forecasts, amended forecasts and supplements. Forecasts are required to be filed every five years, and supplements in every intervening year. Forecasts include a projection of future demand or sendout and a description of facilities which may be required to meet future demand or sendout. Forecasts by electric companies will cover a ten year period, and gas companies a five year period.

980 CMR 7.01, 7.02 and 7.09 apply to both electric and gas companies. 980 CMR 7.03, 7.04 and 7.05 set forth procedures for the preparation of forecasts and supplements by electric companies. 980 CMR 7.06, 7.07 and 7.08 set forth the procedures for the preparation of forecasts and supplements by gas companies.

(2) Statutory Authority. 980 CMR 7.00 is promulgated pursuant to M.G.L. c. 164, §§ 69H, 69I and 69J.

(3) Definitions. For purposes of 980 CMR 7.00, the definitions set forth in 980 CMR 2.03 and 980 CMR 7.00 apply, unless the context or subject matter requires a different interpretation.

Forecast means long-range forecast, amended, or supplemental forecast.

Lead Company means, in the case of a facility proposed to be constructed or owned jointly by more than one company, the company responsible for providing all information required by 980 CMR 7.04, 7.05, 7.07 or 7.08 to be included in a forecast or supplement and all information required pursuant to 980 CMR 1.05(6) and 7.02(8)(a) during the course of a proceeding, and, in the case of a facility proposed to be constructed or owned by only one company, that company.

Peak Demand or Peak Load (electric) means the maximum rate or consumption of electrical energy in a system, or part thereof, expressed as the maximum megawatt hours

per hour during a specified time period (day, week, month, year, etc.)

Peak Demand or Peak Load (gas) means the highest daily consumption in a month, season, or year.

Sendout means the total volume of gas distributed by a company, including gas used by the company and gas unaccounted for.

(4) Application of 980 CMR 1.00 and 2.00. 980 CMR 1.00 and 2.00 shall apply to 980 CMR 7.00 except to the extent that 980 CMR 1.00, 980 CMR 2.00 and 980 CMR 7.00 in conflict. In the event of a conflict, 980 CMR 1.00 shall prevail over 980 CMR 2.00 and 980 CMR 7.00 shall prevail over 980 CMR 1.00 and 2.00.

(5) General Principles and Practices.

(a) 980 CMR 7.00 shall apply to all electric and gas companies, including but not limited to generating companies, transmission companies, pipeline companies, liquid natural gas companies, synthetic gas manufacturing companies, and distribution companies. Each such company shall prepare a separate forecast or supplement, subject to the provisions of 980 CMR 7.01(5)(c).

(b) In the case of a company doing business in other states or countries as well as in the Commonwealth, the company shall prepare two separate forecasts or supplements: one for Massachusetts only and a second for its entire electric or gas operation. The latter forecast shall be for informational purposes and shall not be subject to review by the Council; provided, however, that the Council shall review a forecast of its entire operations if that forecast serves to justify the construction of facilities in the Commonwealth and subject to Council review.

Notwithstanding the provisions of this paragraph to the contrary, interstate gas transmission companies shall not be required to prepare any forecast or supplement for any part of a service area which lies outside of the Commonwealth of Massachusetts and the states of Connecticut, Maine, New Hampshire, New York, Rhode Island and Vermont.

(c) Companies may file joint forecasts or supplements, using the same or comparable methodologies and assumptions. Even so, all historical sales and demand or sendout data and forecast levels must be stated separately for each company whose wholesale and retail sales exceed two percent of total retail sales in the Commonwealth. Any company whose wholesale and retail sales do not exceed two percent need not file such data separately if it participates in a joint forecast or supplement. In the event of a joint forecast or supplement, the Council may conduct a joint adjudicatory proceeding concerning the forecasts or supplement. In such a proceeding the Council may render separate and different decisions for different companies.

(d) Electric companies shall, whenever appropriate and unless otherwise specified, report data in terms of megawatts electric (MW), megawatts thermal (MWt), megawatt-hours (MWh), kilovolts (kV), megavolt-amperes (MVA), or millions of Btu's (MMBtu). Gas companies shall, whenever appropriate and

unless otherwise specified, report data in terms of millions of Btu's (MMBtu) or millions of Btu's per day (MMBtu/day).

(e) The following practices shall be followed when accurate historical data cannot be provided.

1. Historical data which cannot be provided shall be estimated.
2. Notation shall be made indicating which data were estimated.
3. A description of the estimation process used shall be included in the forecast or supplement.
4. Data records of significant required data shall be kept so as to replace the estimated data if the data becomes available in subsequent forecast years. Such estimated data shall be replaced, if appropriate, by the next long-range forecast or supplement.

(f) Where a facility is to be owned jointly by more than one company, then a designated lead company may include in its long-range forecast the information required by 980 CMR 7.04(8) or 7.07(7) and all other participants may incorporate such information by reference.

(g) The information required by this Chapter shall be submitted in such form as the Council may require.

(h) The procedures and requirements established in 980 CMR 7.03, 7.04, 7.06 and 7.07 for forecasts shall apply to supplements to the extent appropriate pursuant to the terms of 980 CMR 7.05 and 7.08.

(6) Exemption of Facilities Under Construction.

(a) No electric or gas facility which is under construction prior to May 1, 1976, shall be subject to any requirement that it be included in an approved long-range forecast, nor shall failure to include such a facility in a long-range forecast impair in any way the rights of the company constructing the facility to file an application for a Certificate with the Council in regard to the facility or to seek a license to construct, operate or maintain the facility from any local or other state agency.

7.02: Procedures

(1) Petition. A petition, as used in Part, shall consist of any long-range forecast, supplement, or amended forecast filed with Council pursuant to 980 CMR 7.00. A complete petition shall be deemed to have commenced an adjudicatory proceeding.

(2) Title; Other Required Information. In addition to the information required by 980 CMR 7.03 - 7.08, every petition, as far as possible, shall contain the following:

- (a) a title which indicates the nature of the proceedings, whether a long-range forecast, a supplement, or an amended forecast, and the complete name and address of the lead company filing the petition and of any other company or companies for which it is filed;
- (b) the name and address of the officer of the company to whom communications with respect to the petition should be addressed and, if the

- company is represented by counsel, the name and address of counsel;
- (c) a reference to the statute pursuant to which the petition is filed; and
 - (d) a request that the long-range forecast, supplement, or amended forecast which is the subject of the petition be approved.

(3) Filing Dates.

- (a) Every electric company shall file the first long-range forecast containing the information required by 980 CMR 7.03 and 7.04 and every gas company shall file the first long-range forecast containing the information required by 980 CMR 7.06 and 7.07, either individually or jointly with other such companies, on or before May 1, 1976; the second long-range forecast shall be filed on or before December 31, 1980 for gas companies or April 1, 1981 for electric companies; and subsequent long-range forecasts shall be filed every fifth year thereafter.
- (b) Every electric and gas company shall file the first supplement, either individually or jointly with other such companies, on or before December 31, 1976, and subsequent supplements shall be filed each year thereafter except years during which a long-range forecast is filed pursuant to 980 CMR 7.02(3)(a).

(4) Notice. Notice of filing of a petition shall be given by the Council or the company in the manner set forth in 980 CMR 1.03(2). Such notice shall, in addition, state that copies of the petition are available at the offices of the Council and at repositories of documents chosen pursuant to 980 CMR 7.02(5) and that persons desiring more information should contact the Council.

(5) Repository of Documents. Each company participating in the filing of a petition shall place a copy or copies of the petition in one or more repositories of documents chosen pursuant to 980 CMR 2.03(4). Each electric company shall choose at least one repository for each 2,000,000 MWH of sales or part thereof per year. Each gas company shall choose at least one repository for each 15,000,000 MMBtu or part thereof sold per year. Repositories shall be chosen and distributed in order to provide convenient access to the petition to as many of the company's customers as possible. The Council may in its discretion require that additional documents, data or transcripts be provided for each such repository by the company or any other party. Materials may be removed from a repository after the conclusion of all judicial appeals or the expiration of all time limits for judicial appeals.

(6) Adjudicatory Hearing. The Council shall hold an adjudicatory hearing within six months after the filing of a complete petition. The Council may in its discretion combine proceedings concerning more than one petition in a single adjudicatory hearing, provided that the Council issues a separate decision for each such petition.

(7) Informational Hearing. The Council shall conduct a public hearing for informational purposes in each locality in which there is the site or alternative site for a facility proposed in a petition. 980 CMR 7.00 shall not be interpreted to require, but may be interpreted to allow, the Council to hold an informational hearing in more than one

place for any proposed transmission line. The informational hearing shall be held at least 14 days prior to the commencement of the adjudicatory hearing required by 980 CMR 7.02(6). An informational hearing shall not be required concerning a proposed site, if such hearing has already been held in regard to a previously filed long-range forecast or supplement. The Council shall give such notice or require the company to give such notice as is necessary to inform the public in the affected area of the time, place, and nature of the hearing. The Council may require the company proposing the site or alternative site to present oral testimony at such an informational hearing as a necessary precondition of Council approval of the petition.

(8) Conduct of Adjudicatory Proceedings.

(a) The Council may in its discretion require at any time during an adjudicatory hearing subject to 980 CMR 7.00 that a company or other party produce such additional information, data or evidence as the Council needs to render a decision.

(b) In reviewing any question presented concerning a proposed facility described pursuant to 980 CMR 7.04 or 7.07, the Council may in its discretion examine the question in great detail or examine the question in limited detail. The Council may base its determination of the level of detail upon such factors as the completeness of plans for and design of the facility, the adequacy or probable adequacy of review or subsequent review by local or other state agencies, the importance of the question, and the wishes of the company, local and other state agencies, or other parties.

(9) Council Decisions.

(a) Within 12 months from the date of filing of a complete petition or such other time as may be agreed upon, the Council shall render a decision approving the forecast or supplement, approving it subject to stated conditions, approving it in part and rejecting it in part, or rejecting it. Approval shall require a majority vote. The Council may, among other actions, approve a forecast but retain jurisdiction to review further the plans for a particular facility at a later time. Conditional or partial approval of a forecast or supplement may, according to its terms, be deemed to satisfy the requirement of M.G.L. c. 164, § 69I, that a site and facility conform to the most recently approved forecast or supplement for purposes of permit proceedings before other agencies.

(b) The Council shall approve the demand or sendout segment of a forecast or supplement, if it determines that each of the following requirements has been met by the company:

1. All historical data and current operating data and information required by 980 CMR 7.00 and information relating to energy policies for the Commonwealth are substantially accurate and complete.

2. The forecasts of demand required by 980 CMR 7.00 are based on substantially accurate historical information or, where appropriate, estimates and upon reasonable statistical projection methods. What constitutes a reasonable statistical projection method may depend upon the

size of the company, the state of the art of forecasting, and the extent to which the requirements of 980 CMR 7.00 are met.

3. Any projections relating to service area, facility use and pooling or sharing arrangements are consistent with such forecasts of other companies subject to Council jurisdiction as may have already been approved and with reasonable projections of activities of companies outside of Council jurisdiction in the New England area.

(c) The Council shall approve the supply segment of a forecast or supplement, if it determines that all information relating to environmental impact of proposed facilities is substantially accurate and complete, and that plans for expansion and construction of facilities are consistent with current health, environmental protection, and resource use and development policies of the Commonwealth as set forth in the constitution, general laws, and duly promulgated rules and regulations of responsible state, regional or local agencies. Approval of a planned facility in a forecast shall not be construed to limit or pre-empt the authority and responsibility of any state, regional or local agency to issue or require any approval, consent, permit, certificate or condition for the construction, operation or maintenance of such facility under other laws of the Commonwealth, nor shall such approval constitute a determination that a proposed facility complies with or satisfies any statutory or regulatory standard other than those of the Council. Therefore, to the extent that any such policies are implemented or enforced by a state, regional, or local agency by the issuance or requirement of an approval, consent, permit, certificate or condition for the construction, operation or maintenance of such facility, such plans will be deemed consistent with such policies.

(d) In reviewing a supply plan the Council shall approve or disapprove only those facilities included pursuant to 980 CMR 7.04(8) and 7.07(7). It shall not approve or disapprove facilities and generating plants included pursuant to 980 CMR 7.04(5)-(7), 7.07(5) and (6).

(e) A decision shall be set forth in writing and the reasons therefor included.

(10) Determination of Council Jurisdiction.

(a) Any company or other person may at any time petition the Council pursuant to this Rule for a determination whether an electric or gas plant, transmission line, pipeline, or gas storage tank (proposed, under construction, or existing) is within the definition of facility, is exempt from Council jurisdiction pursuant to 980 CMR 7.01(1), should be included in any forecast or supplement pursuant to 980 CMR 7.00, or may qualify for a Certificate pursuant to 980 CMR 6.00.

(b) Should the Council decide to consider such a petition; its action shall be taken through an adjudicatory proceeding, subject to all procedures set forth in 980 CMR 1.00.

(c) The petition shall state the name of the petitioner, the nature of the petition, and the determination of the Council sought by the petitioner.

(d) The petition shall be accompanied by such briefs, information, data, and

written testimony as the petitioner may deem appropriate to support its request. The Council may during a hearing require such additional information, data and evidence as it in its discretion deems appropriate.

(e) If a hearing is held, the Council shall within four months issue a decision on a petition stating fully the extent to which a proposed facility is within or without Council jurisdiction for a specific purpose, or deferring a determination of Council jurisdiction.

(f) The Council may consider a petition pursuant to this Rule to determine whether a facility is within Council jurisdiction for purposes of a forecast, supplement, Application for a Certificate at the same time its reviews the forecast, supplement or Application. A company by submitting information to the Council pursuant to 980 CMR 6.00 or 7.00 does not waive the right to challenge Council jurisdiction.

(g) A determination by the Council pursuant to this Rule that a proposed facility is not within the jurisdiction of the Council and need not be included in forecast or supplement shall be equivalent to a determination by the Council that the said facility and its site conform to the most recently approved forecast or supplement. Such a determination by the Council shall be sufficient but not necessary to satisfy the requirement of M.G.L. c. 164, § 69I that the Council approve a forecast or supplement to which the site and facility conform before any state agency may issue a construction permit.

(h) The existence of the procedures of this Part shall not be deemed to preclude any party from raising the question of Council jurisdiction during a proceeding.

7.03: Demand Forecasts by Electric Companies

(1) Scope and Purpose. 980 CMR 7.03 sets forth the requirements for forecasts of demand which every electric company must meet in each long-range forecast. A long-range forecast, including a demand forecast, must be filed on the dates set forth in 980 CMR 7.02(3)(a). Every electric company must file a long-range forecast. Forecasts of demand shall be submitted and reviewed so that the Council may better determine whether plans for new facilities as proposed by electric companies are in conformity with the energy, environmental and economic policies of the Commonwealth.

(2) Description of Agreements.

(a) A long-range forecast shall include summary descriptions of all existing agreements with other electric companies relating to joint planning or joint forecasting of electric power needs, to construction of future facilities, or to the purchase or sale of electric power or reserve capacity. This description shall include:

1. the name of the parties to each agreement, identifying the role of each party;
2. the Federal Energy Regulatory Commission or Massachusetts Department of Public Utilities Docket or File Number, if any, associated

with the agreement;

3. the commencement and termination dates of each agreement;

4. for agreements for the purchase or sale of electricity, the amount of power that will or may be bought or sold in each year covered by the long-range forecast, expressed in MW and/or MWH (if no MW or MWH figure is expressed in the contract, the forecasting company shall estimate the MW or MWH requirements needed to fulfill the contract); and

5. for agreements of the joint planning or forecasting of electricity needs, a summary of the provisions of the agreement.

(b) For the purposes of 980 CMR 7.03(2) the term "existing agreements" shall include such contracts, letters of intent, and precedent agreements as contain legal commitments. A company may at any time petition the Council by submitting a contract, letter of intent, precedent agreement or other agreement for a determination whether it is an existing agreement as defined in this Rule. The Council may require further information and shall within 60 days of the petition issue a determination. A company may petition in the alternative for a determination pursuant to this paragraph that an item is not an existing agreement or for a determination pursuant to 980 CMR 4.04(3) that the item is exempt from public access; in such event the Council shall protect the confidentiality of the item as provided by 980 CMR 4.04(4).

(3) Demand Forecasting Requirements.

Each long-range forecast shall meet the requirements specified in 980 CMR 7.03(4) through (7).

(4) Time Frame.

(a) Except as provided by 980 CMR 7.03(2) or (3), the period of time to be covered by the forecast shall include:

1. the five calendar years preceding the year in which the forecast is submitted, for purposes of establishing historical baseline data for each of the categories of information to be included in the forecast; and

2. at least the succeeding ten calendar years (where a company seeks approval of a facility more than ten years prior to the expected date of operation, it shall extend its forecast by the appropriate number of years).

(b) For purposes of the forecast required to be filed on or before May 1, 1976, the period of time to be covered shall, if the company forecasts on a calendar year basis, include:

1. the years 1970 through 1974 for historical purposes;

2. the year 1975 as the current year; and

3. at least the years 1976 through 1985 for forecast purposes.

(5) Methodology for Forecasting Demand. The Council does not prescribe a particular methodology that must be used by all electric companies in forecasting future demand. However, the selected methodology must be explained and justified by the forecasting company in accordance with the requirements of 980 CMR 7.03(5).

Furthermore, the methodology must meet the applicable requirements of 980 CMR 7.09.

(a) The methodology shall be fully described, and such description shall include:

1. identification of significant determinants of future demand, and of the means by which they were taken into account;
2. description of data used in making the forecast and identification of the sources of such data;
3. explanation of techniques employed for gathering, organizing, adjusting, and extrapolating from or interpreting the data, together with examples of the applications of such techniques;
4. significant assumptions made and the reasons for making them; and
5. a statement of the level of confidence of the company in dependent and independent variables, and explanation of how the statement of the level of confidence was arrived at.

(b) The forecast shall be accompanied by explanations of whether and, if so, how it takes into account and how were obtained the following determinants of future demand:

1. population;
2. price of electricity and price-elasticity of demand for electricity (including cost of fuels used in generation), both absolute and relative to that of other forms of energy that may be substituted for electricity in end uses;
3. income of consumers, or value of the gross product of the service area;
4. energy policies of the Commonwealth and of the federal government, both currently existing and possible for the future;
5. strategies of the forecasting company for promoting consumption or conservation of electricity, or for modifying load curves; and
6. any other factors deemed relevant, such as investment by others in and use of capital goods that require electricity, including residential appliances (e.g., stoves, refrigerators, water heaters and heating and air conditioning equipment), industrial equipment and commercial equipment.

(c) The forecast documentation shall be sufficiently explicit and complete to allow Council fully to understand the forecast from the information presented.

(6) Contents of Forecast. The demand forecast shall include the following items for each of the years it covers:

- (a) the total annual electrical energy generated and consumed or to be generated and consumed in the forecast area, with breakdowns for each of the classes specified in 980 CMR 7.03(7);
- (b) the seasonal peak loads for both summer and winter, with breakdowns for each of the classes specified in 980 CMR 7.03(7)(a);
- (c) annual load factor;
- (d) annual load duration curve, defined as the duration in hours of each level

of kilowatt demand;

(e) load profiles, defined as kilowatt loads to be graphed as a function of the time of day, for representative weekday in both January and August and for actual past winter and summer peak days or a forecast peak day in both January and August. Forecasts of the 980 CMR 7.03(6)(c) through (e) are not required to be disaggregated among the classes in 980 CMR 7.03(7).

(7) Level of Aggregation.

(a) Separate forecasts of total annual electrical energy generated and consumed and seasonal peak loads shall be made for each of the following customer classes;

1. residential without electric heating;
2. residential with electric heating;
3. commercial
4. industrial;
5. street lighting;
6. railway;
7. sales for resale;
8. any other customer classes;
9. losses, internal use and unaccounted for; and
10. total energy requirements.

The foregoing categories shall be defined to the extent possible as defined by the Federal Energy Regulatory Commission.

(b) The forecast of total annual electrical energy consumed by industrial customers required by 980 CMR 7.03(6)(a) and 7.03(7)(a)4. shall be disaggregated by two digit Standard Industrial Classification Code.

7.04: Supply Plans of Electric Companies

(1) Scope and Purpose.

(a) 980 CMR 7.04 sets forth the requirements for a statement of supply resources and plans which every electric company must meet in each long-range forecast. A long-range forecast, including supply plans, must be filed on the dates set forth in 980 CMR 7.02(3)(a) in the same manner as provided by 980 CMR 7.03(1). Except as otherwise provided by this section or 980 CMR 7.05(3), every facility expected to commence operation in the tenth year after the date of a forecast must be included in the supply plans required by 980 CMR 7.04(8). For purposes only of the long-range forecast required to be submitted on or before May 1, 1976, a company must include pursuant to 980 CMR 7.04(8) all facilities expected to commence operation at any time prior to December 31, 1985, and not exempted from Council authority for any reason. Facilities expected to commence operation more than ten years after the date of the forecast may be included in the supply plan. Only those facilities required to be described as set forth in 980 CMR 7.04(8) are subject to Council approval or disapproval. Information concerning other construction projects must in any event be provided

to the extent required by 980 CMR 7.04(5), (6) and (7).

(b) Statements of supply plans shall be submitted and reviewed so that the Council may better determine whether the supply plans will fulfill the energy, environmental and economic policies of the Commonwealth.

(c) As provided by 980 CMR 7.04(1)(b), an electric company may include a proposed facility in a forecast or modify the plans for a proposed facility pursuant to 980 CMR 7.04(8) nine years or less before it is expected to commence operation, if the electric company's plans have changed, requiring the completion of a facility nine years or less after the date of the forecast under consideration. The company shall notify the Council of such change of plans or proposed facility as early as possible. The notification may be in the form of the filing of a long-range forecast, amended forecast, supplement, or in the form of a motion to amend an approved forecast or supplement or a forecast or supplement then under consideration. The circumstances and factors necessitating the change in plans and the completion of a facility shall be fully described in said notification.

(2) Inventory of Resources.

(a) Each electric company shall provide one or more maps of appropriate scale showing:

1. the location and capacity of all generating facilities, including units below 100 MW (including jointly-owned units and units outside Massachusetts);
2. the location of transmission substations with a voltage rating of 69 kV or higher; and
3. the location of transmission lines rated 69 kV or higher and interconnections with the transmission facilities of other companies.

(b) Each electric company shall provide a schedule of existing generating facilities (including jointly-owned facilities), including units below 100 MW which shall contain:

1. the facility name, location, and in-service date;
2. unit numbers;
3. the MW capability (summer and winter);
4. the type or types of energy resources used;
5. the type of service (base load, cycling, peaking);
6. the total acreage of the facility site; and
7. a statement concerning the reliability of the facility during each of the most recent five years.

In the case of any facility containing any single generating unit with a capacity in excess of 100 MW, the information required by this paragraph, whenever appropriate, shall be reported separately for every generating unit comprising the facility.

(c) Each electric company shall provide a schedule of existing 69 kV or higher voltage transmission facilities which shall contain as to each transmission circuit:

1. origin, terminus and length;
2. design and operating voltages;

3. nominal width of right-of-way (in the case of a right-of-way containing more than one circuit the total width will be given),
4. type of structure; and
5. size of conductor and material.

(d) Each electric company shall provide a schedule of existing transmission substations with a voltage rating of 69 kV or higher which shall contain:

1. name and location;
2. transmission voltage
3. main power transformer capacity; and
4. the total acreage of the substation site.

(3) Federal Energy Regulatory Commission Reports. Each Company shall submit any Federal Energy Regulatory Commission form that the Council determines may be useful. The Council may require that a copy of any Commission form be deposited in any repository of documents chosen pursuant to 980 CMR 7.02(5).

(4) Comparison of Resources and Requirements to Meet Forecast Demand.

(a) For each of the years covered by the forecast, the following items should be listed as total generating capacity at the time of the winter and summer peaks. These items should be differentiated as to existing or additional capacity and capacity in units included or not included in the definition of "facility". Some elements may be unknown or difficult to forecast, but the basis for any estimates should be described:

1. anticipated peak loads;
2. capacity available from existing sources;
3. capacity available from planned additions;
4. planned retirements;
5. capacity available from purchases to meet peak;
6. capacity committed to sell coincident with peak; and
7. reserve capacity.

(b) Estimates of the total energy input in primary fuels required to meet demand for the first two future years of the forecast should be furnished. Primary fuels should be organized by standard categories (nuclear fuel, coal, gas and the various petroleum products) and quantified on the basis of MMBtu.

(c) The company shall state fully the extent to which consideration of the risk of insufficient generating capacity influences the plans set forth pursuant to 980 CMR 7.04(1).

(5) Small Generating Plants Planned. Each company shall provide, for each generating plant of less than 100 MW (including jointly-owned plants) planned or under construction with an in-service date within the coming ten years, the following information to the extent known or planned:

- (a) the facility name and location;
- (b) the unit numbers;
- (c) the anticipated in-service date;

- (d) the MW capability (summer and winter);
- (e) the type or types of energy resources to be used;
- (e) the type of service (base load, cycling, peaking);
- (f) the total acreage of the facility site; and
- (h) a statement of the anticipated reliability of the facility.

This information is required for informational purposes only.

(6) Generating Facilities Planned in Other States. Each company shall provide for each generating plant or facility of any size, planned or under construction in a state other than Massachusetts with an in-service date within the coming ten years, and owned or to be owned entirely or in part by the company, the following information to the extent known or planned:

- (a) the facility name and location;
- (b) the unit numbers;
- (c) the anticipated in-service date;
- (d) the MW capability (summer and winter);
- (e) the type or types of energy resources to be used;
- (f) the type of service (base load, cycling, peaking); and
- (g) a statement concerning the anticipated reliability of the facility.

(7) Exempt and Approved Facilities.

(a) Each company shall provide for each facility (including jointly-owned facilities) planned or under construction in the Commonwealth with an in-service date within the coming ten years but not requiring Council approval in a forecast because exempt pursuant to 980 CMR 7.01(6) or 980 CMR 7.02(10) or because already contained in an approved forecast or supplement, the information required by this regulation to the extent known or planned.

- (b) For each such generating facility, the company shall state:
- 1. the facility name and location;
 - 2. the unit numbers
 - 3. the anticipated in-service date;
 - 4. the MW capability (summer and winter);
 - 5. the type or types of energy resources to be used;
 - 6. the type of service (base load, cycling, peaking); and
 - 7. a statement concerning the anticipated reliability of the facility.

- (c) For each such transmission facility, the company shall state:
- 1. origin, terminus, length and, if known, route;
 - 2. design and operating voltages;
 - 3. the anticipated in-service date;
 - 4. type of structure; and
 - 5. size of conductor and material.

(8) Planned Facilities.

- (a) For each new facility to be located in Massachusetts, not otherwise approved or exempted, the lead company shall include a description of the facility

and an assessment of its environmental impact as well as a discussion of the relationship of the proposed facility to the current health, environmental protection, and resource use and development policies of the Commonwealth as set forth in the constitution, general laws, and duly promulgated rules and regulations of responsible state, regional or local agencies. Such description shall include the following information:

1. name of the lead company;
 2. name of participating owners;
 3. facility name and location; and
 4. predicted dates of commencement and completion of construction.
- (b) The lead company should also:
1. state the name and degree of jurisdiction of other state agencies (include references to statutory authority of agency);
 2. state the name and degree of jurisdiction of federal agencies (include references to statutory authority of agency); and
 3. identify the agency or agencies for which environmental assessments must be prepared under M.G.L. c. 30, § 62 and 42 USC, § 4332.
- (c) For a proposed transmission line, the lead company shall provide the information and documentation set forth in Administrative Bulletin 78-2.
- (d) For a proposed new substation site or expansion of any existing site beyond the acreage shown on the schedule required under 980 CMR 7.04(2)(d)4. for those substations which are associated with and constructed at the same time as a transmission line or generating facility whose construction is to be commenced after May 1, 1976, the lead company shall provide:
1. a summary statement of purpose, location, approximate size of the site, general nature and capacity of major equipment, proposed ultimate development, estimated cost, alternative sites, other alternatives, and a discussion of the alternative of no new substation;
 2. a general description of the site and surrounding area in terms of natural features, including topography and water resources, and land use, both existing and proposed, including types and densities in developed areas, agricultural and other open uses, parks and recreation areas, areas designated by a governmental agency for protection as nature preserves or historic or scenic districts, near-by roads, near-by utility or transportation corridors and zoning; and
 3. an evaluation of the impact of the facility in terms of its effect on natural features and land use as just described, its visibility, and, if applicable, its air quality, water quality, solid waste, radiation and noise effects.
- (e) For a proposed generating facility, the lead company shall provide:
1. a summary statement of purpose, name and location or alternative locations of the facility, approximate size of site and buildings, size and nature of the major equipment, peak capacity (summer and winter), the type of service (base-load, cycling, peaking), fuel storage facilities, major

ancillary equipment, alternative sites, possible alternative fuel types, alternative methods of generation or sources of power, effect if the specified generating facility were not constructed, estimated cost, and major environmental protection equipment;

2. a description of each alternate site and surrounding area in terms of natural features, including topography, water resources, soils, vegetation, and wildlife, and land use, both existing and proposed, including types and densities in developed areas, agricultural and other open uses, parks and recreation areas, areas designated by a governmental agency for protection as nature preserves or historic or scenic districts, nearby roads, nearby utility and transportation corridors;

3. aerial photographs of appropriate scale of each alternative site and and the surroundings showing the approximate location of the facilities;

4. a map showing the current use of each alternative site, contiguous property and surroundings up to one mile;

5. U.S.G.S. 1:24,000 scale maps with overlays showing each alternative site and the location of each alternative facility; and

6. an evaluation of the impact of the facility in terms of its effect on natural features (especially water resources), land use as described above, visibility, air quality, water quality, solid waste, radiation, noise, and socioeconomics.

(9) Exclusions. The following activities are deemed not to constitute the construction of facilities subject to 980 CMR 7.04(8):

(a) a change, not having significant visual impact, of transformers, circuit breakers, or other miscellaneous equipment contained within the physical boundaries of the substation site;

(b) reconductoring or rebuilding of an existing transmission line at the same voltage;

(c) modification in or replacement of equipment at or within a generating plant site which does not increase the gross capacity at such site by more than ten percent;

(d) modifications or minor relocations of a transmission line required by a public highway project or other governmental action;

(e) changes or alteration to a transmission line which do not significantly affect the general physical characteristics of the facility, including conversion to a higher voltage;

(f) temporary placement of generating or substation facilities to be utilized for a period less than one year; and

(g) commencement of permanent placement of facilities on an emergency basis subject to compliance with the provisions of 980 CMR 6.06(2).

(1) Scope and Purpose. 980 CMR 7.05 sets forth the requirements for annual supplements which every electric company must file on the dates set forth in 980 CMR 7.02(3)(b). Annual supplements shall be submitted so that the Council may review any significant proposed changes in the information contained in previously approved forecasts and supplements, so that the Council may determine whether plans for new facilities as proposed by electric companies will fulfill the energy, environmental and economic policies of the Commonwealth.

(2) Content of Supplements.

(a) Each annual supplement shall set forth appropriate changes in the company's long-range forecast, as previously supplemented, considering at least a ten year period succeeding the date on which the current supplement is filed. Any new facility expected to commence operation in the tenth year after the said date must be included in the supplement. Any new facility for which Council approval is required and which is expected to commence operation nine years or less after the said date may be included only as provided by 980 CMR 7.04(1)(c). Each supplement shall explain any differences between the most recent previous forecast or supplement and the current supplement and events occurring in the year since the previous forecast or supplement was filed. Each supplement shall fulfill or report the fulfillment of any stated conditions that the Council, in granting a qualified approval of a previously filed long-range forecast or supplement, may have required the forecasting company to meet in its annual supplement or by the time such supplement is filed.

(b) In the event that an annual supplement represents the first filing by a company or that a company did not file the next previous long-range forecast, the supplement must, unless an intervening supplement has done so, contain all information normally required by 980 CMR 7.03 and 7.04 to be filed in connection with a long-range forecast.

(3) Occasional Supplements.

(a) Notwithstanding the time limits of 980 CMR 7.04(1), an electric company may at any time file an occasional supplement to an approved forecast or annual supplement. The sole purpose of an occasional supplement shall be to propose for Council approval the construction of one or more transmission lines less than 15 miles in length and of a capacity of 115 kV or less and ancillary structures.

(b) An occasional supplement shall be a petition, and notice of its filing shall be given in the manner required by 980 CMR 1.03(2) and 7.02(4).

(c) An occasional supplement shall consist of:

1. a statement setting forth the need for the transmission line to provide for a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost;
2. a statement providing all the information required by 980 CMR 7.04(8)(b) and (c); and
3. such other information as the Council may reasonably require.

(d) Notwithstanding the time limit of 980 CMR 7.02(9)(a) the Council shall

within six months from the date of filing of a complete, occasional supplement render a decision approving it, approving it subject to stated conditions, approving it in part and rejecting it in part, or rejecting it.

(e) An occasional supplement may be combined with a forecast or an annual supplement.

7.06 Demand or Sendout Forecasts by Gas Companies

(1) Scope and Purpose. This section sets forth the requirements for forecasts of demand and sendout which every gas company must meet in each long-range forecast in which a new facility is proposed. If no new facility is proposed, a gas company shall be required to submit a forecast of sendout only but shall not be required to submit a forecast of demand. Every gas company must file a long-range forecast.

Forecasts of demand and sendout shall be submitted and reviewed so that the Council may better determine whether plans for new facilities as proposed by gas companies are in conformity with the energy, environmental and economic policies of the Commonwealth.

Interstate natural gas companies subject to Federal Energy Regulatory Commission regulation and persons who have filed an application with the Federal Energy Regulatory Commission for construction of facilities subject to the Natural Gas Act, and operating or intending to operate in Massachusetts will file demand or sendout data with the Council. Such data may be extracted from the companies' annual filings with the Federal Energy Regulatory Commission and shall be for informational purposes only; no adjudicatory proceedings will be held thereon. Duplicates of the companies' FERC filing may be submitted in lieu of the above demand and sendout data.

(2) Description of Agreements.

(a) A long-range forecast shall include summary descriptions of all existing agreements with other gas companies relating to joint planning or joint forecasting of gas needs, to construction of future facilities, or to the purchase or sale of gas. This description shall include:

1. the names of the parties to each agreement, identifying the role of each party;
2. the Federal agency or Massachusetts Department of Public Utilities Docket or File Number, if any, associated with the agreement;
3. the commencement and termination dates of each agreement;
4. for agreements for the purchase or sale of gas, the amount of gas that will or may be bought or sold in each year covered by the long-range forecast. (If no figure is expressed in the contract, or if it may not be possible to fulfill the contract entirely because of supply constraints, the forecasting company shall estimate the amount of gas that will be bought or sold in each year covered by the forecast.); and
5. for agreements for the joint planning or forecasting of gas demand and sendout, a summary of the provisions of the agreement.

(b) For the purpose of this section the term "existing agreements" shall include

such contracts, letters of intent, and precedent agreements as contain legal commitments. A company may at any time petition the Council by submitting a contract, letter of intent, precedent agreement or other agreement for a determination whether it is an existing agreement as defined in 980 CMR 7.06. The Council may require further information and shall within 60 days of the petition issue a determination. A company may petition in the alternative for a determination pursuant to 980 CMR 7.06(2)(b) that an item is not an existing agreement or for a determination pursuant to 980 CMR 4.04(3) that the item is exempt from public access; in such event the Council shall protect the confidentiality of the item as provided by 980 CMR 4.04(4).

(3) Demand and Sendout Forecasting Requirements. Each long-range forecast shall meet the requirements specified in 980 CMR 7.06(4) and 7.06(7).

(4) Time Frame.

(a) Except as provided by 980 CMR 7.06(4)(b) or (c), the period of time to be covered by the forecast shall include:

1. the five calendar years preceding the year in which the forecast is submitted, for purposes of establishing historical baseline data for each of the categories of information to be included in the forecast;
2. the current calendar year, for which both projected and actual data shall be submitted; and
3. at least the succeeding five calendar years.

(b) For purposes of the forecast required to be filed on or before May 1, 1976, the period of time to be covered shall, if the company forecasts on a calendar basis, include:

1. the years 1970 through 1974 for historical purposes;
2. the year 1975 as the current year; and
3. at least the years 1976 through 1980 for forecast purposes.

(5) Methodology for Forecasting Demand and Sendout. The Council does not prescribe a particular methodology that must be used by all gas companies in forecasting future demand and sendout. However, the selected methodology must be explained and justified by the forecasting company in accordance with the requirements of this section. Furthermore, the methodology must meet the applicable requirements of 980 CMR 7.09.

(a) The methodology shall be fully described, and such description shall include or be accompanied by:

1. identification of significant determinants of future demand and sendout, and of the means by which they were taken into account;
2. description of data used in making the forecast, and identification of the sources of such data;
3. explanation of techniques employed for gathering, organizing, adjusting, and extrapolating from or interpreting the data, together with examples of the applications of such techniques;
4. significant assumptions made and the reasons for making them;

5. a statement of the level of confidence of the company in dependent and independent variables, and explanations of how each statement of the level of confidence was determined.

(b) The forecast shall be accompanied by explanations of whether and, if so, how it takes into account and how were obtained the following actual and estimated determinants of future demand and sendout:

1. population;
2. price of gas and price elasticity of demand for gas (including costs of feedstocks used in production of gas), both absolute and relative to those of other forms of energy that may be substituted for gas and in end uses;
3. income of consumers, or value of the gross product of the service area;
4. energy policies of the Commonwealth and of the federal government, both currently existing and possible for the future;
5. constraints upon the availability of gas or feedstocks;
6. strategies of the forecasting company for promoting consumption or conservation of gas; and
7. any other factors deemed relevant, such as investment by others in and use of capital goods that require gas, including residential appliances (e.g., stoves, water heaters and space heating systems), industrial and commercial equipment.

(c) The forecast documentation shall be sufficiently explicit and complete to allow the Council to fully understand the forecast from the information presented.

(6) Contents of Forecast. The demand and sendout forecast shall include the following items for each of the years it covers:

- (a) total annual gas demand and sendout in the forecast area, with breakdown for each of the classes specified in 980 CMR 7.06(7);
- (b) the peak daily winter demand and sendout, with a breakdown for each of the classes specified in 980 CMR 7.06(7)(a) and (b);
- (c) annual load factor, defined as average daily demand and sendout divided by maximum daily demand and sendout;
- (d) annual load duration curve, defined as the duration in days of each level of daily sendout;
- (e) load profiles, defined as sendout to be graphed as a function of the time of day, for a representative weekday in both January and August and for the winter peak day;
- (f) load profiles, defined as annual demand and sendout graphed as a function of the day of the year. Forecasts of the items required by 980 CMR 7.06(6)(c) and (f) are required only with reference to total gas demand and sendout in the forecast areas. Forecasts of the items required by 980 CMR 7.06(6)(d) and (e) are required only with reference to total gas sendout in the forecast area; no forecast of demand is required.

(7) Level of Aggregation.

(a) Separate forecasts of total annual demand and sendout and of peak daily winter demand and sendout shall be made for each customer class used by the company for billing purposes, and there shall be included data for losses, gas used by the company and gas unaccounted for.

(b) For each rate class the customers of which are predominantly residential, the demand and sendout data required by 980 CMR 7.06(6)(a) and (b) shall be disaggregated for customers with and for customers without gas heating.

(c) For each rate class the customers of which are predominantly industrial, the demand and sendout data required by 980 CMR 7.06(6)(a) shall be disaggregated by two digit Standard Industrial Classification Code.

7.07: Supply Plans of Gas Companies

(1) Scope and Purpose.

(a) 980 CMR 7.07 sets forth the requirements for a statement of supply resources and plans which every gas company must met in each long-range forecast.

A long-range forecast, including supply plans, must be filed on the dates set forth in 980 CMR 7.02(3)(a) in the same manner as provided by 980 CMR 7.06(1). Except as otherwise provided by this section, every facility expected to commence operation in the fifth year after the date of a forecast must be included in the supply plans required by 980 CMR 7.07(7). For purposes only of the long-range forecast required to be submitted on or before May 1, 1976, a company must include pursuant to 980 CMR 7.07(7) all facilities expected to commence operation at any time prior to December 31, 1980, and not exempted from Council authority for any reason. Facilities expected to commence operation more than five years after the date of the forecast may be included in the supply plan; in such a case 980 CMR 7.06(4)(a)(3) must be complied with. Only those facilities required to be described as set forth in 980 CMR 7.07(7) are subject to Council approval or disapproval. Information concerning other construction projects must in any event be provided to the extent required by 980 CMR 7.07(5) and (6).

(b) Statements of supply plans shall be submitted and reviewed so that the Council may better determine whether the supply plans will fulfill the energy, environmental and economic policies of the Commonwealth. The long-range forecast will allow for an early initial review of the plans for proposed facilities.

(c) As provided by this paragraph, a gas company may include a proposed facility in a forecast pursuant to 980 CMR 7.07(7) four years or less before it is expected to commence operation. The Council may approve that part of the forecast relating to the said facility if it determines that changed circumstances which the gas company should not reasonably have foreseen and taken into account at the time of filing of any prior forecast or supplement require the completion of the facility four years or less after the date of the forecast under consideration. The changed circumstances should be described fully in the said forecast.

(2) Inventory of Resources. The following inventory of existing facilities shall be included in each long-range forecast.

(a) The inventory shall include a schematic map showing the routes of the company's pipelines having a normal operating pressure in excess of 100 psi gauge and the location of units designed for or capable of the manufacture or storage of gas.

(b) The inventory shall include a schedule of the company's existing facilities designed for or capable of the manufacture or storage of gas. Companies may exclude from such schedule any manufacturing or storage facility not used and not reasonably capable of being used (due to geographic separation, unavailable capacity or other reason) for the manufacture or storage of gas ultimately consumed in Massachusetts.

(c) Such a schedule shall contain for each facility included pursuant to 980 CMR 7.01(2)(b):

1. a general description of the type of facility (for example for storage facilities: LNG storage, vapor storage; for manufacturing facilities: SNG plant, propane air facility, LNG vaporization facility, LNG liquefaction facility);
2. the type of feedstock currently utilized for the manufacture of gas and the type of gas produced, or the type of gas stored, as applicable;
3. the capacity of the existing facility under normal operating conditions, expressed as the unit's normal annual and normal daily manufacturing capacity; or as its storage capacity; and
4. in the case of a facility for the manufacture of gas, a statement concerning the reliability during each of the most recent five years.

(d) The inventory shall include a schedule of all of the company's pipelines having a normal operating pressure in excess of 100 pounds per square inch (100 psi) gauge including those less than one mile in length, or at the company's election, a schedule of such pipelines in a separable segment of the company's interstate pipelines used or reasonably capable of being used to transmit gas to customers located in the Commonwealth. Said schedule shall contain the following information for each such pipeline:

1. name or numerical designation (if any);
2. origin, terminus, and length;
3. diameter and maximum allowable operating pressure; and
4. general description of the right-of-way.

(3) Federal Energy Regulatory Commission Reports. Each company shall submit copies of any Federal Energy Regulatory Commission form that the Council determines may be useful. The Council may require that a copy of any Commission form be deposited in any repository of documents chosen pursuant to 980 CMR 7.02(5).

(4) Comparison of Resources and Requirements to Meet Forecast Demand. For each of the years covered by the forecast, the following items should be listed as total gas supply capacity at the time of the winter peak. These items should be differentiated as to

existing or additional capacity in units included or not included in the definition of "facility". Some elements may be unknown or difficult to forecast, but the basis for any estimates should be described:

- (a) anticipated annual and peak demand and sendout;
- (b) sendout available from existing sources;
- (c) sendout available from planned additions; and
- (d) planned retirements.

The company shall state fully the extent to which considerations of the risk of insufficient supply influence the plans set forth pursuant to this section.

(5) Facilities Planned in Other States. Each company shall provide for each gas facility, planned or under construction in a state other than Massachusetts with an in-service date within the coming five years, owned or to be owned entirely or in part by the company and intended to serve Massachusetts customers directly or indirectly, the following information:

- (a) the nature of the facility;
- (b) the anticipated in-service date;
- (c) the capacity of the facility; and
- (d) in the case of the facility for the manufacture of gas, a statement concerning the anticipated reliability.

This information is required for informational purposes only.

(6) Exempt and Approved Facilities. Each company shall provide for each facility (including jointly owned facilities) planned or under construction in the Commonwealth with an in-service date within the coming five years but not requiring Council approval in a forecast because exempt pursuant to 980 CMR 7.01(6) or 7.02(10) or because already contained in an approved forecast or supplement, the following information to the extent known or planned:

- (a) the nature of the facility;
- (b) the anticipated in-service date;
- (c) the capacity of the facility; and
- (d) in the case of the facility for the manufacture of gas, a statement concerning the anticipated reliability.

This information is required for informational purposes only.

(7) Planned Facilities.

- (a) For each new facility to be located in Massachusetts, the in-service date of which is to be within the time period covered by the filing, which has not been included in a long-range forecast, an amended forecast or a supplement previously approved by the Council, and which has not been exempted from Council jurisdiction pursuant to 980 CMR 7.01(6) or 7.02(10), the lead company shall include a description of the facility and its environmental impact as well as a discussion of the relation of the proposed facility to the current health, environmental protection, and resource use and development policies of the Commonwealth as set forth in the constitution, general laws, and duly

promulgated rules and regulations of responsible state, regional or local agencies having the force of law. Such description shall include the following information:

1. name of the lead company;
 2. facility name and location;
 3. names of participating owners; and
 4. predicted dates of commencement and completion of construction.
- (b) The lead company shall also:
1. name any other state agency asserting jurisdiction over the proposed facility and include a reference to the statutory authority granting agency jurisdiction;
 2. name any federal agency asserting jurisdiction over the proposed facility and include a reference to the statutory authority granting agency jurisdiction; and
 3. identify the agency or agencies for which environmental assessments must be prepared under M.G.L. c. 30, § 62 and 42 USC, § 4332.
- (c) For a proposed manufacturing or storage facility, the company shall provide:
1. a summary statement of purpose, name and location of facility; approximate size of site; general description of major structures and equipment; alternate sites; possible alternative methods of manufacture or storage considered by the company; estimated cost; major environmental protection equipment; type of facility, anticipated reliability and planned daily and annual capacity of SNG plants, LNG vaporization facilities, LNG liquefaction facilities and other manufacturing facilities; capacity of LNG storage facilities, vapor storage facilities and other gas storage facilities; type of feedstock and operating fuel; type and size of storage for feedstock and operating fuel; and a discussion of the alternative of no new manufacturing or storage facility;
 2. a general description of site and surrounding area in terms of natural features including topography, water resources, soils, vegetation, and wildlife, and land use, both existing and proposed, including types and densities in developed area, agricultural and other open uses, parks and recreation areas, areas designated by a governmental agency for protection as natural preserves or historic or scenic districts; nearby roads, nearby gas pipelines, transportation corridors and zoning (Include a map or aerial photographs showing the proposed site and its surroundings up to one mile from the site, designating current major land use patterns within such area, and showing the location within the site of the proposed facilities.); and
 3. an evaluation of impact of the facility in terms of its effect on: natural features (especially water resources), land use as just described, visibility, air quality, water quality, solid waste, and noise.
- (d) For a proposed gas pipeline intended to have normal operating pressure in excess of 100 psi gauge and length in excess of one mile, the company shall

provide:

1. a summary statement of name or numerical description of line, purpose, location of terminal points, general location and length of route, facility characteristics including types of structures above and below the ground, proposed normal maximum operating pressure, right-of-way width, estimated cost, possible alternative routes and transportation methods, and a discussion of the alternative of no new pipeline (include U.S.G.S maps of 1:24,000 scale of the area of the proposed route and alternative routes);
 2. land use, both existing and proposed, including types and densities in developed areas, agricultural and other open uses, parks and recreation areas, areas designated for protection as natural preserves or historic or scenic districts, road crossings and traffic patterns, nearby utility or transportation corridors, cemeteries and schools; and
 3. a brief evaluation of impact of the facility in terms of its effect on natural features and land use, as just described, its visibility and, if applicable, its air quality, water quality, solid waste, and noise effects.
- (e) For each planned new facility the company shall provide a statement of need, which shall consist of:
1. a description of the ways in which the company's existing facilities will not be adequate to serve the requirements forecast; and
 2. a description of the use which is to be made of each new facility, including whether the new facility will be used to replace existing facilities or to meet additional requirements.

(8) Exclusions. The following activities are deemed not to constitute the construction of facilities subject to 980 CMR 7.07(7):

- (a) modification, addition to, or replacement of equipment at an existing site which is a component part of an existing facility capable of the manufacture or storage of gas, unless such modification, addition, or replacement:
 1. increases the capacity of the storage component of the facility by more than 50% or 50,000 barrels; or
 2. increases the capacity of the manufacturing component of the facility by more than 50% or 25,000 MMBtu per day provided that increases of 10,000 MMBTU per day or less do not constitute the construction of facilities under 980 CMR 7.07(7);
- (b) necessary maintenance of existing facilities for the manufacture or storage of gas or existing pipelines;
- (c) the upgrading of an existing pipeline, which has been in existence for at least 24 months and which is capable of operating at pressures in excess of 100 psi gauge;
- (d) construction of a pipeline which for at least the first two years of service will be used at a pressure of less than 100 psi gauge or which involves the rebuilding, relaying, minor relocation, or restructuring of all or part of an existing line which traverses essentially the same route; and

(e) commencement or permanent placement of facilities on an emergency basis subject to the provisions of 980 CMR 6.06(2).

(9) Interstate Facilities.

(a) When interstate natural gas companies regulated by the Federal Energy Regulatory Commission (FERC) pursuant to the Natural Gas Act, 15 U.S.C. sections 717 *et seq.* plan to construct new or modify existing facilities within the Commonwealth, the Council requires the following information:

1. A copy of the company's application to FERC for a certificate of public convenience and necessity with respect to the facility construction/modification.
2. Identification of the (1) general route of a pipeline or the sites of other facilities and (2) of the municipalities in the Commonwealth to be affected by such construction/modification and a description of the manner in which these municipalities will be affected. This information can be provided in a cover letter to the submittal of the FERC application to the Council, which letter references those parts of the application where that information can be found.

This information will be submitted to the Council at the same time the individual company files its application with FERC.

Within 60 days of receipt of this information, the Council will hold public informational hearings in the municipality or municipalities where the affected sites are located and will complete said hearings within 30 days of the time for commencement thereof. The company will attend this hearing so that the public's questions concerning the construction project may be addressed and potential difficulties identified early in the application process. Interested citizens who attend such hearings will be advised as to the nature and availability of their options, rights and/or remedies with respect to the project. Notice of such hearings will be given 21 days in advance in a practical manner to be specified by the hearing officer designated by the Council.

(b) Upon receipt of the company's application to FERC, the Council will act to preserve the rights of interested citizens of the Commonwealth by intervening in the FERC proceedings on said application. After conducting the public informational hearings as described in 980 CMR 7.07(9)(a), the Council will present to FERC through its intervention the difficulties and problems identified at said public hearings.

(c) Further, upon receipt of said application, the Council will contact the appropriate FERC personnel and request joint public hearings as described in (a) above and also will request joint adjudicatory hearings, said joint hearings to be conducted by the Council and FERC.

(d) The Council will also continue to apply the criteria set off in Policy 8 of the Massachusetts Coastal Zone Management Program (MCZMP) as authorized by the Federal Coastal Zone Management Act (the "Act"), 16 U.S.C. sec. 1451 *et seq.* and implemented further in 980 CMR 9.00 herein. A MCZMP consistency review of the company's application as contemplated by the Act, 16 U.S.C. sec.

1456(c)(3) will be conducted by the Massachusetts Coastal Zone Management Office.

7.08: Annual Supplements by Gas Companies

(1) Scope and Purpose. 980 CMR 7.08 sets forth the requirements for annual supplements which every gas company must file on the dates set forth in 980 CMR 7.02(3)(b).

Annual supplements shall be submitted so that the Council may review any significant proposed changes in the information contained in previously approved forecasts and supplements and so that the Council may determine whether plans for new facilities as proposed by gas companies will fulfill the energy, environmental and economic policies of the Commonwealth. Interstate natural gas companies will update on an annual basis the data filed with the Council pursuant to the third paragraph of 980 CMR 7.06(1) for informational purposes only.

If a new facility is proposed as part of a supplement and if demand as well as sendout has not been forecast in the most recent forecast or supplement, a company must provide a complete long-range forecast of demand and sendout, in lieu of the supplement.

(2) Content of Supplements.

(a) Each annual supplement shall set forth appropriate changes in the company's long-range forecast, as previously supplemented, considering at least a five year period succeeding the date on which the current supplement is filed. Any new facility expected to commence operation in the fifth year after the said date must be included in the supplement. Any new facility for which Council approval is required and which is expected to commence operation four years or less after the said date may be included only as provided by 980 CMR 7.07(1)(c). Each supplement shall explain any differences between the most recent previous forecast or supplement and the current supplement and events occurring in the year since the previous forecast or supplement was filed. Each supplement shall fulfill or report the fulfillment of any stated conditions that the Council, in granting a qualified approval of a previously filed long-range forecast or supplement, may have required the forecasting company to meet in its annual supplement or by the time such supplement is filed.

(b) In the event that an annual supplement represents the first filing by a company or that a company did not file the next previous long-range forecast, the supplement must, unless an intervening supplement has done so, contain all information normally required by 980 CMR 7.06 and 7.07 to be filed in connection with a long-range forecast.

7.09: Forecast Requirements

(1) Scope and Purpose. This Part sets forth basic requirements for forecasting and applies to electric and gas forecasts and supplements filed on and after December 1, 1978.

980 CMR 7.09(2) applies to all forecasting methodologies while 980 CMR 7.09(3) applies only where econometric approaches are employed.

- (2) General Requirements. With respect to all forecasting methodologies:
- (a) Each is to be designed to accommodate sensitivity testing of major assumptions and parameters.
 - (b) Where computer programs are employed, these are to be made available to the Council upon request.
 - (c) Where computer programs are employed, source listings of computer programs, descriptions of the structure of each program and subprogram, and descriptions of the relationships between logical parts are to be made available to the Council upon request.
 - (d) Each forecasting methodology must explicitly consider and quantify the following factors:
 - 1. conservation programs and policies of the Commonwealth;
 - 2. conservation programs and policies of the federal government;
 - 3. the penetration of alternative energy technologies, including but not limited to, wind and solar devices, cogeneration, and biomass conversion;
 - 4. improvements in the efficiencies of new and existing appliances and machinery, including building insulation;
 - 5. behavioral changes with respect to energy use by customers, such as reduction in heating, cooling, and lighting levels;
 - 6. responses to higher price levels, potential or actual changes in rate structure, and load management.
- (3) Econometric Forecasting Models. Documentation of econometric forecasting methodologies for final form equations shall include:
- (a) a statement of the a priori theoretical or empirical basis for functional form and variable selection;
 - (b) a statement of the procedures by which variables have been added or deleted in the development of final form specification;
 - (c) justification of all estimated coefficients which have incorrect signs;
 - (d) identification of the method of estimation;
 - (e) statistical documentation of each equation; including standard error of estimation, residual sum of squares, F-test, R-squared (adjusted or unadjusted), and a test for serial correlation for time series data;
 - (f) statistical documentation of each estimated parameter of each independent variable, including t-value or standard error at the same specified level of significance, mean of the dependent variables, and the standard deviation of each dependent variable.

Upon request of the Council, the petitioner or lead company shall provide copies of the original computer outputs of all regressions, all data files together with identification of the sources of the data, and an index of variable names for cross-referencing between computer outputs and the forecast documentation.

REGULATORY AUTHORITY:

980 CMR 7.00; M.G.L. c. 164, §§ 69H, 69I, 69J.

980 CMR 8.00: NOTICES OF INTENTION TO CONSTRUCT AN OIL FACILITY

Section

8.01: General Provisions

8.02: Procedures

8.03: Notice of Intention to Construct an Oil Facility

8.01: General Provisions

(1) Scope and Purpose. 980 CMR 8.00 establishes the procedures for the filing of Notices of Intention to Construct an Oil Facility for certain facilities expected to be valued at more than \$5,000,000 and the requirements for the contents of such notices. The petitioner shall file an initial petition with the Council not later than two years prior to commencement of construction of a complex refinery, and not later than one year prior to construction of any other type of oil facility.

(2) Statutory Authority. 980 CMR 8.00 is promulgated pursuant to M.G.L. c. 164, §§ 69H - 69J.

(3) Definitions. In 980 CMR 8.00, the definitions set forth in 980 CMR 2.03(3) and 8.01(3) apply, unless the context or subject matter requires a different interpretation.

Complex Refinery means a facility for the refining of oil designed so that more than 35% of its output at normal crude oil throughput rates could be gasoline or refined oil products lighter than gasoline.

Petition means a Notice of Intention to Construct an Oil Facility filed with the Council under the provisions of M.G.L. c. 164, §§ 69I and 69J.

Petitioner means a person or group of persons proposing to construct a new oil facility.

Refining means the process of manufacturing from crude oil or refined oil products, such products as gasoline, kerosene, naptha (including jet fuel), middle distillate (including No. 2 fuel oil and jet fuel), liquid petroleum gas, refined lubricating oils, diesel fuel or residual fuel oils.

Transshipment means the transfer of oil or refined oil products:

- (a) From one mode of transport (ship, truck, tank car, pipeline, etc.) to another mode of transport;
- (b) From any mode of transport to storage from which the oil or refined oil products will be eventually transferred to a mode of transport; and
- (c) From storage to any mode of transport. Transshipment shall not include transfer to storage facilities of ultimate consumers of oil or refined oil products.

(4) Application of 980 CMR 1.00 and 2.00. The Rules set forth in 980 CMR 1.00 and 2.00 shall apply to 980 CMR 8.00 except to the extent that 980 CMR 1.00, 980 CMR 2.00 and 980 CMR 8.00 are in conflict. In the event of a conflict, 980 CMR 1.00 shall prevail over 980 CMR 2.00 and 980 CMR 8.00 shall prevail over 980 CMR 1.00 and 2.00.

(5) General Principles and Practices.

(a) The Energy Facilities Siting Council is responsible for implementing the energy policies contained in M.G.L. c. 164, §§ 69H-S, to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

(b) In the event that a proposed oil facility is intended to serve directly or indirectly customers in any other state or country, the petitioner shall prepare two separate market forecasts: one for Massachusetts only and the second for the total marketing region likely to be served by the proposed oil facility.

(c) In the case of an oil facility proposed to be constructed by two or more oil companies, the companies may file a joint initial petition. If a joint petition is filed, there shall be a single filing fee and a combined hearing.

(d) Unless a petitioner is a public utility or governmental body, the Council shall not, in reviewing an initial petition, refuse to approve an initial petition because it believes that there are sufficient existing oil facilities or because it believes that construction of a new oil facility may have adverse effects upon competitors of the petitioner proposing the new facility.

(e) The following practices shall be followed when accurate historical data cannot be provided:

1. Historical data which cannot be provided shall be estimated.
2. Notation shall be made indicating which data were estimated.
3. A brief description of the estimation process used shall be included in the Notice of Intention.

(f) If a petitioner believes that 980 CMR 8.00 requires the submission of information which is a trade secret and which would be damaging if made public, the petitioner may seek a Council determination pursuant to the provisions of 980 CMR 4.00 that the item is exempt from public access and entitled to Council protection. If the Council determines pursuant to 980 CMR 4.00 that certain information is not exempt from public access and if the petitioner withdraws the information, the petitioner may withhold the information and state that the information is confidential. In such event the petitioner shall provide as much material as possible without jeopardizing the confidential information, and shall state as fully as possible the reasons for withholding the information. If information is withheld, the Council may take such action as it deems appropriate, including approving the Notice of Intention, denying the Notice of Intention by reason of petitioner's failure to submit complete information, and approving the Notice of Intention subject to the condition that the information be provided to the Council at a subsequent date.

(g) Petitioners are encouraged to make informal contacts with the Council

staff concerning proposed facilities prior to the filing of an initial petition pursuant to 980 CMR 8.02(1).

(h) A petitioner which intends to use a site for business purposes, which use does not require approval by the Council, and intends at some later date to construct an oil facility on the said site is encouraged but not required to file an initial petition with the Council concerning the proposed oil facility at the earliest possible time.

(i) In cases where an oil facility requires approval by the council as well as by other federal, state, or local agencies, the Council shall encourage and otherwise promote the holding of joint hearings in order to facilitate governmental decision-making and to avoid duplication of effort. In addition, the Council may avail itself of the particular expertise of other state agencies in technical or specialized areas during the course of such joint hearings to further expedite the approval process.

(6) Exemption of Facilities under Construction.

(a) No oil facility which is under construction prior to May 1, 1976, shall be subject to any requirement that a Notice of Intention to Construct an Oil Facility be approved by the Council, nor shall failure to file a Notice of Intention impair in any way the rights of the company constructing the facility to file an application for a Certificate with the Council in regard to the facility or to seek a license to construct, operate or maintain the facility from any local or other state agency.

(b) An oil facility shall be considered to be under construction if the erection or installation of major buildings or equipment has begun or if the sum of expenses already incurred for preparation work at the site and irreversible contractual commitments of funds for the purchase of equipment or construction supplies is valued in excess of \$5,000,000.

(7) Filing Fees. Each petition shall be accompanied by payment of a fee as herein provided.

(a) For an oil refinery, the fee shall be \$2.50 per rated barrel per day of throughput capacity, but in no event more than \$400,000.

(b) For an oil storage or transshipment facility, the fee shall be \$.025 per rated barrel of storage capacity, but in no event more than \$400,000.

(c) For an oil terminal intended to handle water-borne shipments, the fee shall be \$.25 per rated barrel per day of throughput capacity, but in no event more than \$400,000.

(d) For an oil pipeline, the fee shall be \$.50 per cubic foot of volume contained for that part of the line proposed for a new right of way, plus \$.25 per cubic foot of volume contained for that part of the line proposed for an established right of way, but in no event more than \$400,000.

8.02: Procedures

(1) Initial Petition. An initial petition or application, as referred to in 980 CMR 8.02, shall consist of any Notice of Intention to Construct an Oil Facility filed with the Council pursuant to 980 CMR 8.00. The filing of such initial pleading shall be deemed to have commenced an adjudicatory proceeding.

(2) Title; Other Required Information. In addition to the information required by 980 CMR 8.02, every initial petition, so far as possible, shall contain the following:

- (a) A title which indicates the nature of the proceeding and the complete name and address of the petitioner;
- (b) The name and address of the officer of the petitioner to whom communications with respect to the initial petition should be addressed and, if the petitioner is represented by counsel, the name and address of such counsel;
- (c) A reference to the statute pursuant to which the initial petition is filed (M.G. L. c. 164, § 69I or 69J); and
- (d) A request that the Notice of Intention which is the subject of the initial petition be approved.

(3) Filing Dates.

- (a) Any petitioner intending to construct an oil facility other than a complex refinery shall file an initial petition with the Council at least one year prior to the commencement of construction of the facility.
- (b) A petitioner intending to construct a complex refinery shall file an initial petition with the Council at least two years prior to the commencement of construction of the facility.
- (c) In the event that a petition is disapproved or approved subject to conditions, the petitioner or a successor in interest may file a new Notice of Intention at any time.

(4) Notice. Notice of filing a petition shall be given by the Council or the petitioner in the manner set forth in 980 CMR 1.03(2). Such notice shall, in addition, state that copies of the initial petition are available at the offices of the Council and at a repository of documents chosen pursuant to 980 CMR 8.02(5) and that persons desiring more information should contact the Council.

(5) Repository of Documents. Each petitioner filing a petition shall place a copy of the petition in a repository of documents chosen pursuant to 980 CMR 2.03(4). For each proposed facility, the petitioner shall choose at least one repository to be located in a city or town in which the facility is proposed to be constructed or in a city or town adjacent thereto. The repository shall be chosen in order to provide convenient access to the initial petition to as many interested and affected persons as possible. The Council may in its discretion require that additional documents, date or transcripts be provided for such repository by the petitioner or any other party. Materials may be removed from a repository after the conclusion of all judicial appeals or the expiration of all time limits for judicial appeals.

(6) Adjudicatory Hearing. The Council shall commence an adjudicatory hearing on each petition within six months after the filing thereof.

(7) Informational Hearing. The Council shall conduct a public hearing for informational purposes in each locality in which there is a site for a facility proposed in a petition. The informational hearing shall be held at least 14 days prior to the commencement of the adjudicatory hearing required by 980 CMR 8.02(6). The Council shall give such notice or require the company to give such notice as is necessary, to inform the public in the affected area of the time, place, and nature of the hearing. The Council may require the company proposing the site to present oral testimony at such an informational hearing as a necessary precondition of Council approval of the petition.

(8) Conduct of Adjudicatory Proceedings.

(a) The Council may in its discretion require at any time during an adjudicatory hearing subject to 980 CMR 8.00 that a company or other party produce such additional information, data, or evidence as the Council needs to render a decision.

(b) In reviewing any question presented concerning a proposed facility described pursuant to 980 CMR 8.00, the Council may in its discretion examine the question in great detail or examine the question in limited detail. The Council may base its determination of the level of detail upon such factors as the completeness of plans for and design of the facility, the adequacy or probable adequacy of subsequent review by local or other state agencies, the importance of the question, and the wishes of the company, local and other state agencies, or other parties.

(9) Council Decisions.

(a) Within 24 months from the date of filing of an initial petition stating the intention to construct a complex refinery, or within 12 months from the date of filing an initial petition stating the intention to construct an oil facility other than a complex refinery, the Council shall render a decision approving the initial petition, approving it subject to stated conditions, or disapproving it. A majority vote shall be required to approve an initial petition. The Council may, among other actions, approve an initial petition but retain jurisdiction to review further the plans for a particular facility at a later time or approve an initial petition subject to approval of a particular facility by a local or other state agency at a later time. Conditional approval of an initial petition may, according to its terms, be deemed to satisfy the requirement of M.G. L. c. 164, § 69I, that a site and facility conform to the most recently approved Notice of Intention to Construct an Oil Facility for purposes of permit proceedings before other agencies.

(b) The Council shall approve a petition if the Council determines that each of the following requirements has been met by the petitioner:

1. All information regarding sources of supply for the proposed facility and financial information regarding the petitioner and its proposed facility are substantially accurate and complete.

2. The petitioner's capital investment plans to complete its facility, the long-term economic viability of the facility, the overall financial soundness of the petitioner, and the petitioner's capability and experience involving the transshipment, transportation, storage, refining and marketing of oil and refined oil products are adequate.

3. All information relating to current activities, facilities agreements, environmental and economic impact, and land use and development, is substantially accurate and complete.

4. The plans for expansion and construction of the proposed facility, including any buffer zones or alternatives thereto, are consistent with current health, environmental protection, and land and resource use and development policies as adopted by the Commonwealth.

5. The plans for expansion and construction of the proposed facility are consistent with the state policy of the Commonwealth to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

(c) A decision shall be set forth in writing with the reasons therefor included.

(10) Determination of Council Jurisdiction.

(a) Any company or other person may at any time petition the Council pursuant to this section for a determination whether an oil refinery, tank farm, terminal, or pipeline is within the definition of facility, is exempt from Council jurisdiction pursuant to 980 CMR 8.01(6), should be the subject of a Notice of Intention to Construct an Oil Facility, or may qualify for a Certificate pursuant to 980 CMR 6.00. The facility for which a determination of Council jurisdiction is sought may be proposed, existing or under construction.

(b) Should the Council decide to consider such a petition, its action shall be taken through an adjudicatory proceeding subject to all procedures set forth in 980 CMR 1.00.

(c) The petition shall state the name of the petitioner, the nature of the petition, and the determination of the Council sought by the petitioner.

(d) The petition shall be accompanied by such briefs, information, data, and written testimony as the petitioner may deem appropriate to support its request. The Council may during a hearing require such additional information, data and evidence as it in its discretion deems necessary.

(e) If a hearing is held, the Council shall within four months issue a decision on a petition stating fully the extent to which a proposed facility is subject to Council jurisdiction, stating that the proposed facility is within or without Council jurisdiction for a specific purpose, or deferring a determination of Council jurisdiction.

(f) The Council may consider a petition pursuant to 980 CMR 8.02(10) to determine whether a facility is within Council jurisdiction for purposes of a Notice of Intention to Construct an Oil Facility or Application for a Certificate at the same time that it reviews the Notice or Application. A company by submitting information to the Council pursuant to 980 CMR 6.00 or 7.00 does not waive the

right to challenge Council jurisdiction.

(g) A determination by the Council pursuant to 980 CMR 8.02(10) that a proposed facility is not within the jurisdiction of the Council and need not be the subject of a Notice of Intention to Construct an Oil Facility shall be equivalent to a determination by the Council that the said facility and its site conform to the most recently approved Notice of Intention. Such a determination by the Council shall be sufficient but not necessary to satisfy the requirement of M.G. L. c. 164, § 69I, that the Council approve a Notice of Intention to which the site and facility conform before any state agency may issue a construction permit.

(h) The existence of the procedures of 980 CMR 8.02 shall not be deemed to preclude any party from raising the question of Council jurisdiction during a proceeding concerning a Notice of Intention.

8.03: Notice of Intention to Construct an Oil Facility

(1) Form of Initial Petition. A Notice of Intention to Construct an Oil Facility shall be a petition or amended petition and shall provide all information required by 980 CMR 8.02(1), 8.02(2) and 8.03. In cases where additional information is needed for a determination, the Council reserves the right to require such additional information and material.

(2) Description of Proposed Facility and Site.

(a) For each facility covered by a petition, the following information shall be provided:

1. Facility name and location;
2. Predicted dates of commencement and completion of construction, and first commercial operation;
3. The names of any local or other state agencies asserting or which may assert jurisdiction over the proposed facility, and a description of the asserted jurisdiction, including a reference to the statutory authority of the agencies;
4. The names of any federal agencies asserting or which may assert jurisdiction over the proposed facility, and a description of the asserted jurisdiction, including a reference to the statutory authority of the agencies;
5. The names of any state or federal agencies required to prepare an environmental assessment of the proposed facility under M.G. L. c. 30, § 62, or under 42 U.S.C., § 4332; and
6. A description of any zoning by-laws in effect on the date of the initial petition and affecting the proposed site and any alternative sites considered.

(b) The petitioner shall provide the information required pursuant to this paragraph for two or more sites. For those sites which have been rejected, the petitioner shall state the reasons for their rejection.

(c) For a proposed facility for storage of oil or refined oil products (and for

any alternative sites and facilities proposed to the extent that the information is available and relevant) the petitioner shall provide:

1. A general description of major structures and equipment comprising the facility and to be located on the site (the general description shall be accompanied by such detailed descriptions and plans as are then available);
2. Aerial photographs of appropriate scale showing the facility site and its surroundings within a one-mile radius of the site, designating current major land use patterns within the one mile radius, and showing the location of proposed facilities within the site (include written descriptions, keyed to said aerial photographs of developed areas, agricultural or other open areas, parks and recreation areas, areas designed by a governmental agency for protection as nature preserves or historic or scenic districts, zoning patterns, major transportation facilities, existing and proposed, serving the facility site, and provisions, if any, for buffer zones adjoining the site);
3. A statement enumerating the products to be stored at the facility and the facility's designed annual capacity for each such product;
4. U.S.G.S. topographical maps of scale 1:24,000 depicting the site and all lands and waters within 8,000 feet of the site;
5. A general description of environmental protection equipment to be installed at the facility, and other measures to minimize damage to the environment;
6. A statement of the region in which crude oil or refined petroleum products stored at the facility are expected to be sold to retail customers;
7. A statement of the measures, if any, to be taken to reduce the impact on transportation systems and to otherwise provide for an adequate transportation network both in the vicinity of the facility and throughout the area where its product will be marketed.

(d) For a proposed facility for transshipment of oil or refined oil products (and for any alternative sites and facilities proposed to the extent that the information is available and relevant) the petitioner shall provide:

1. A general description of major structures and equipment comprising the facility and to be located on the site (the general description shall be accompanied by such detailed descriptions and plans as are then available);
2. Aerial photographs of appropriate scale showing the facility site and its surroundings within a one mile radius of the site, designating current major land use patterns within the one mile radius, and showing the location of proposed facilities within the site (include written descriptions, keyed to said aerial photographs of developed areas, agricultural or other open areas, parks and recreation areas, areas designated by a governmental agency for protection as nature preserves or historic or scenic districts, zoning patterns, major transportation facilities, existing and proposed serving the facility site, and provisions, if any, for

buffer zones adjoining the site);

3. A statement enumerating the products to be transshipped through the proposed facility, and the anticipated annual quantities to be transshipped for each such product;

4. U.S.G.S. topographical maps of scale 1:24,000 depicting the site and all lands and waters within 8,000 feet of the site;

5. A general description of environmental protection equipment to be installed at the facility, and other measures to minimize damage to the environment;

6. A statement of the region in which the crude oil and refined petroleum products transshipped from the facility are expected to be sold to retail customers;

7. A statement of the measures, if any, to be taken to reduce the impact on transportation systems and to otherwise provide for an adequate transportation network both in the vicinity of the facility and throughout the area where its products will be marketed.

(e) For a proposed pipeline for the transportation of oil or refined oil products which is greater than one mile in length, the petitioner shall provide, for any segment of such pipeline to be located in Massachusetts (and for any alternative routes in Massachusetts or alternative transportation facilities or methods to serve Massachusetts proposed to the extent that the information is available and relevant):

1. Aerial photographs of appropriate scale showing the proposed route and length of pipeline and any laterals, the width of the right of way, and the location of any pumping stations, interconnections with other oil pipelines, and terminal points at which transshipment or direct distribution facilities are located or will be constructed (include written descriptions, keyed to said aerial photographs of the following existing land uses in the vicinity of the right of way or adjoining land to be used for associated equipment by the petitioner: developed areas, agricultural or other open areas, parks and recreation areas, cemeteries, areas designated by a governmental agency for protection as nature preserves or historic or scenic districts, and zoning patterns);

2. A map showing the petitioner's existing oil pipeline system, whether located in Massachusetts or elsewhere, through which oil products may be sent to or from Massachusetts;

3. U.S.G.S. topographical maps of scale 1:24,000 depicting the site and all lands and waters within 8,000 feet of the right of way;

4. A statement enumerating the types of products to be shipped through the proposed pipeline, and the quantity of each anticipated to be delivered annually at each terminus or interconnection at the time the facility is in normal operation (for purposes of this clause, the point at which the pipeline leaves Massachusetts is a terminus);

5. A general description of environmental protection equipment to be installed on the pipeline, and other measures to minimize damage to the

environment;

6. A statement of the region in which the crude oil or refined petroleum products to be shipped through the proposed pipeline are expected to be sold to retail customers;

7. A statement of the measures, if any, to be taken to reduce the impact on the transportation systems and to otherwise provide for an adequate transportation network both in the vicinity of the facility and throughout the area where its products will be marketed.

(f) For facilities which will serve more than one of the purposes enumerated in 980 CMR 8.03(2)(b), 8.03(2)(c), 8.03(2)(d), and 8.03(2)(e), the petitioner may furnish a single description responsive to 980 CMR 8.02(2)(e)1., 8.03(2)(e)2., 8.03(2)(e)4., 8.03(2)(e)5., 8.03(2)(e)6., and 8.03(2)(e)7. Responses to 980 CMR 8.03(2)(b)3., 8.03(2)(c)3., and 8.03(2)(d)3. and 980 CMR 8.03(2)(e)4. shall be made separately with respect to the portion of the facility to which each of the said regulations is applicable.

(3) Description of Applicant. The petitioner and each person who is a party to a joint venture shall submit the following information concerning its business activities:

(a) The petitioner or person shall submit a statement of the organization of the petitioner or person, such as a partnership, corporation or joint venture. If the petitioner or person is an organization chartered under the laws of any jurisdiction, it shall give the name of the state in which the petitioner or person is chartered. If the petitioner is a joint venture, it shall give the name, state or organization and business address of all persons who are parties to the joint venture. If the petitioner or person is a subsidiary corporation, it shall give the names of all parent corporations, the state or incorporation of each, and the nature of the relationship of the parent corporations and the petitioner or person. "Parent corporation" means a corporation controlling the petitioner or person or any corporation controlling a parent corporation of the petitioner or person at any level of the corporation structure of which the petitioner or person is a part.

(b) The petitioner or person shall provide a description of the petitioner's or person's existing activities and capability and experience involving the transshipment, transportation, storage, refining or marketing of oil or refined oil products in the region or regions described in 980 CMR 8.03(2)(b)6., 8.03(2)(c)6., 8.03(2)(d)6., or 8.03(2)(e)1. When the term "product or service sold by the petitioner or person" is used in this paragraph, it shall be construed as referring only to the petitioner's or person's products manufactured or services rendered in the transshipment, transportation, storage, or refining of oil or refined oil products. Said description shall include the following information:

1. Type of market served (for example, wholesale, retail, etc.);
2. Volume or quantity of each product or service sold by the petitioner or person during the calendar or fiscal year preceding the petitioner's or person's application, expressed in an appropriate unit of measure;
3. Gross revenues derived by the petitioner or person in the calendar

or fiscal year preceding the initial petition from each product or service described in 980 CMR 8.03(3)(b)2.; and

4. An income statement of the petitioner or person for the calendar or fiscal year preceding the initial petition and a balance sheet of the petitioner or person as of the end of such year (if the petitioner or person is a subsidiary corporation, furnish a balance sheet and income statement of the subsidiary corporation and a consolidated balance sheet of the organization of which the subsidiary corporation is a part).

(4) Market Area Forecast.

(a) The petitioner shall forecast the sales in the region described in 980 CMR 8.03(2)(b)6., 8.03(2)(c)6., 8.03(2)(d)6., or 8.03(2)(e)6., for each of the products to be manufactured, or services to be rendered by means of the proposed facility. The said region shall not necessarily be limited to the United States of America. In the event a facility is designed for more than one of the purposes for oil facilities enumerated in M.G. L. c. 164, § 69G, the petitioner shall forecast the sales for the products or services which the facility is designed to furnish as the end result of its operation. For example, a manufacturing facility may contain ancillary storage and transshipment facilities. The relevant sales figure for such a manufacturing facility is the level of sales to buyers of the products to be manufactured, not the requirement for storage or transshipment services. Similarly, a pipeline may have ancillary storage and transshipment facilities to be used in connection with the transportation of oil products. The relevant information for such a pipeline is the requirement for transportation services to be furnished by means of pipelines. If a storage and transshipment facility is built as a self sustaining unit, the relevant information is the requirement for storage and transshipment services, not the level of sales to buyers of the products to be stored or transshipped. Such forecast shall contain the following information with respect to each such product or transportation service:

1. Aggregate sales by volume or quantity, of the product or service in the market to be served by the petitioner's facility in each year for three calendar years preceding the initial petition;
2. Projected aggregate sales, by volume or quantity, of the product or service in the market to be served by the petitioner's facility, in each year during a three year period commencing with the first commercial operation of the facility, or, if the proposed facility is a refinery, and is not expected to achieve its designed output capacity within three years from the date of first commercial operation, during the period commencing with the date of first commercial operation and ending with the date of predicted achievement of designed output capacity;
3. Projected aggregate volumes or quantities of products or services to be provided by the petitioner by means of the proposed facility in each year during the facility's first three years of commercial operation, or, if the proposed facility is a refinery, and is not expected to achieve its designed output capacity within three years from the date of first commercial

operation, during the period commencing with the first commercial operation of the facility and ending with the date of predicted achievement of designed output capacity (with respect to facilities for transshipment, transportation, or storage, the aggregate volumes or quantities referred to above shall be the volumes or quantities expected to be put through said facilities during the period or periods in question);

(b) The petitioner shall forecast each source of supply of crude oil or refined oil products for the facility, the volumes or quantities available to the petitioner from each such source during the period described in 980 CMR 8.03(4)(a)2. and 8.03(4)(a)3., and the projected price per unit of the product expected to be supplied. If such sources of supply are not persons not controlled by, or under common control with, the petitioner, the petitioner shall file as part of its initial petition copies of any contracts, letters of intent, or other understandings concerning supply of crude oil or refined oil products as raw materials for manufacture at the proposed facility or to be transshipped, transported or stored in the proposed facility. (The petitioner may apply to the Council pursuant to the provisions of 980 CMR 4.00 for a determination that the above information is a trade secret and is thereby exempt from public access and entitled to appropriate protection.)

(c) Forecasts submitted pursuant to 980 CMR 8.03(4)(a) and 8.03(4)(b) shall contain a description of the methodology employed in making the forecast, which shall consist of the following information:

1. Identification of significant determinants of future sales and supply and of the means by which they were taken into account;
2. A description of data used in making the forecast and identification of the sources of such data;
3. Explanation of techniques employed for gathering, organizing, adjusting, and extrapolating from or interpreting the data, together with examples of the applications of such techniques;
4. Significant assumptions made and the reasons for making them.

(5) Analysis of the Need for Planned Facilities. The petitioner shall describe the relationship between the sales defined in 980 CMR 8.03(4)(a)2. and the output or throughput of the proposed facility stated in 980 CMR 8.03(4)(a)3., as follows:

- (a) A statement of the reasons why other existing and publicly announced proposed facilities cannot fulfill at all or fulfill as well the functions of the proposed facility in meeting the demand defined in 980 CMR 8.03(4)(a)2, and the anticipated consequences of not building the petitioner's proposed facility, including an analysis of any savings or losses to consumers, more or less efficient use of resources, or enhancement or degradation of the environment which may result if the petitioner's proposed facility is constructed;
- (b) A description of alternate new oil facilities which could fulfill the function of the proposed facility;
- (c) A statement of the reasons for selecting the site of the proposed facility and any alternatives discussed pursuant to 980 CMR 8.03(2);

- (d) A description of site locations (other than the site proposed and alternatives discussed by the petitioner) which the petitioner considered in selecting the proposed site, and the reasons why such sites were rejected;
- (e) A statement of the reasons for selecting the designed capacity of the proposed facility and of alternatives still under consideration, including, but not limited to the relation of the designed capacity to satisfying the demand defined in 980 CMR 8.03(4)(a)2., savings in operating costs achieved by a facility of the capacity designed, in relation to a facility smaller than that proposed, and the impact of capital costs of the facility upon its designed capacity, including a discussion of the alternatives of a larger or a smaller facility; and
- (f) A statement of facts which would support a finding that the petitioner will provide the Commonwealth with a necessary energy supply with a minimum impact on the environment at the lowest possible cost.

(6) Environmental Impact of the Proposed Facility. The impact of the proposed facilities and of any alternatives still under consideration upon the environment shall be described as follows:

- (a) The impact of the proposed facility or alternative upon existing land use at the facility site and in the vicinity thereof shall be described, including the effects, if any, of the facility upon population or proposed land used that will be foregone if the facility is built.
- (b) The impact of the facility or alternative upon water resources, air quality, radiation levels, and noise levels shall be described.
- (c) The impact of the facility or alternative upon existing transportation systems both in the vicinity of the facility and throughout the area where its products will be marketed.
- (d) The methods used to dispose of solid wastes from the facility or alternative shall be described, and the impact of such disposal methods upon existing and proposed public and private waste disposal facilities, and upon the environment generally, shall be stated.
- (e) The importance of buffer zones in minimizing the environmental impact of the proposed facility or alternative shall be discussed, and the purpose of any buffer zones included in the petitioner's plans for the proposed facility or alternative shall be stated.

(7) Financial Information. The petitioner shall furnish the following financial information concerning the proposed facility:

- (a) The total amount of funds expected to be committed to construction of the proposed facility, including amounts for real property purchases or leases, for interest during construction, and for direct construction costs;
- (b) A statement identifying the sources or potential sources of such funds (in cases where the exact sources of such funds are not known, the petitioner shall inform the Council generally of its plans for securing such funding) during each year from commencement of construction to the date of completion of construction or first commercial operation, whichever is later, and the present

availability of such funds, whether from petitioner's own capital or from commitments from other persons (if such funds are not currently available without restrictions for investment in the proposed facility, the petitioner shall describe and evaluate the significance of any conditions or restrictions upon the use of such funds);

(c) For each calendar or fiscal year from that in which commercial operation of the facility first occurs or in which the facility is anticipated to achieve its designed capacity, whichever is later, a projected income statement of applicant's operation of the facility during such year; and

(d) A description of insurance coverage to be obtained for or in connection with the construction and operation of the proposed facility.

REGULATORY AUTHORITY

980 CMR 8.00; M. G. L. c. 164, §§ 69H-69J.

980 CMR 9.00: COASTAL ZONE FACILITY SITE SELECTION, EVALUATION, AND ASSESSMENT

Section

- 9.01: General Provisions
- 9.02: Site Evaluation and Comparison
- 9.03: Coastal Zone Management Policies
- 9.04: Intervention

9.01: General Provisions

(1) Scope and Purpose. 980 CMR 9.00 implements the Massachusetts Coastal Zone Management Program as adopted by the Secretary of Environmental Affairs under M.G.L. c. 21A, §§ 2, 3, 4 and recognizes the Siting Council's designation as the energy facilities siting agency under the Massachusetts Coastal Zone Management Program (hereinafter CZM Program) and the coastal zone management act and regulations 16 USC, s. 1454(b)(8), 1455(c)(8); 15 CFR 923.14, 923.52.

The Siting Council's authority to adopt this chapter is set forth at M.G.L. c. 164, § 69H, I, J; M.G.L. c. 30A, § I *et seq.*; and 980 CMR 3.00. Requirements set forth here are in addition to those set forth in 980 CMR 6.00, 7.00, 8.00, 10.00, and 11.00 and siting guidelines. In the case of conflict, 980 CMR 9.00 shall govern the final instance.

The Siting Council will review the installation of facilities subject to certification under the Federal Natural Gas Act for purposes of determining compliance with the CZM Program as set out in 980 CMR 7.07(9). Findings as to these facilities will issue from the Office of Coastal Zone Management pursuant to 16 U.S.C. § 1451 *et seq.*

(2) Definitions.

Area of Critical Environmental Concern means an area which has been designated by the Secretary of Environmental Affairs pursuant to M.G.L. c. 21A, § 2 and M.G.L. c. 30, § 61 *et seq.*, or which has been accepted for designation under Section 6.46 of the regulations establishing the CZM Program by the Executive Office of Environmental Affairs (hereinafter CZM regulations) prior to the filing of the Notice of Intent or Long-Range Forecast or Supplement and which has been designated prior to approval by the Council of the Notice of Intent or Long-Range Forecast. The term area for preservation or restoration, under the coastal zone management act, 16 USC, § 1451 *et seq.* shall be synonymous with the term, area of critical environmental concern.

Coastally Dependent Energy Facility means

1. a facility which uses indigenous energy resources of the coastal zone;
2. a facility which serves as a transfer point between ocean and land;
3. a facility which transmits or transports energy or energy sources from a transfer point or other energy facility in the coastal zone to an inland or other

coastal location;

4. a facility which stores energy or energy sources necessary for transshipment from the ocean, for surge storage, or to supply coastal energy facilities and maritime industries, as more fully specified in the CZM Program, Policy 8. A facility which does not meet one of these criteria is not coastally dependent as more fully specified in Policy 8.

Significant Resource Area means an area within the coastal zone, as identified in the Massachusetts Coastal Zone Management Program, and includes salt ponds, salt marshes, dunes, beaches, barrier beaches, shell fish beds, estuaries, coastal embayments, anadromous fish runs, erosion areas, floodplains, public recreation beaches, historic sites and districts, developed harbors, and port areas.

9.02: Site Evaluation and Comparison

(1) Evaluation and Comparison.

(a) Where a facility is proposed for coastal siting, the lead company or petitioner must propose, evaluate, and compare at least one alternative site. In the case of a facility which is claimed to be coastally dependent, at least one alternative site in the coastal zone must be proposed, evaluated, and compared. In the case of a facility which is not coastally dependent, the alternative to be proposed, evaluated and compared shall be inland of the coastal zone. Any alternative shall be reasonably determined and demonstrated to be capable of development and licensing or approval by all federal, state, regional and local agencies. The evaluation will include a justification of the necessity for or advantage of coastal siting together with an explicit definition of the process developed to compare alternative sites.

(b) The lead company or petitioner will complete and provide a following site evaluation for each alternative site as set forth below.

1. Identification of the site relative to the areas of critical environmental concern and significant resource areas;
2. Identification and evaluation of Massachusetts Coastal Zone Management Program policies and regulatory requirements which apply to each site;
3. Identification of statutory and regulatory citations to all federal, state, regional, and local licenses, approvals, permits, and authorizations required for construction, operation, and decommissioning of the proposed facility;
4. Identification of relevant facilities and resources which may be in the national interest, including potential competition or conflicts among or between such facilities and resources; and
5. Submission upon request of the Council of complete and current copies of all engineering, design, safety, environmental analyses, reports, tests, applications, approvals, licenses, and decisions which have been submitted to or issued by any federal, state, regional, or local agency in

connection with the site or use.

6. Environmental description of each site and its vicinity, including a review of significant land, air, and water use; ecology; geology; hydrology; meteorology;

7. Environmental analysis of construction impact;

8. Environmental analysis of facility operation including land, air and water use ecological impact; heat dissipation; waste, chemical, and biocide discharge; health and safety; visual and aesthetic impact; decommissioning; and

9. Socioeconomic impact analysis including measures to mitigate adverse impact during construction, operation, and decommissioning;

10. Summary analysis of all measures to be taken to comply with land, air, and water use and ecological standards, policies, regulations, bylaws, and statutes of the Commonwealth and its political subdivisions.

(c) The environmental evaluation must be site specific but may be premised upon standard facility design parameters rather than upon specific facility design. The evaluation must be substantively complete before formal review of a proposed facility will begin. The analysis may employ secondary sources such as existing studies and reports completed by public or private agencies. All studies, reports, and analyses employed in the preparation of the evaluation and comparison are to be provided to the Siting Council.

(d) The Siting Council may waive or modify the requirements of this rule in the case of:

1. a proposed facility which is ancillary to an existing use and which does not substantially alter the environmental impact at the primary site;

2. a transmission or pipeline facility which is proposed to be sited within an existing and currently used corridor;

3. an oil or gas storage facility with a capacity which does not exceed 50,000 gallons and which is proposed for an existing and currently used site.

(e) The primary site will be the lead company or petitioner's preferred site unless the Council determines that an alternative site is superior on the basis of the evaluation and comparison and applicable environmental laws, regulations, and policies including those of the Massachusetts Coastal Zone Management Program.

9.03: Coastal Zone Management Policies

(1) Coastal Zone Management Policies.

(a) The Siting Council specifically recognizes the policies and policy appendix of the Massachusetts Coastal Zone Management Program as adopted by the Secretary of Environmental Affairs under M.G.L. c. 21A, §§.2, 3, 4 as a health, environmental protection, resource use, and development policy of the Commonwealth as required by M.G.L. c. 164, § 69H, 69H½.

(b) In the case of a facility proposed for siting within or impacting an area of

critical environmental concern, the Council will give prime consideration to the environmental policy to protect such natural resource areas against degradation as more fully specified in the Massachusetts Coastal Zone Management Program, Policies 1, 2 and 11. "Prime consideration" means that the Council will give special weight to the environmental impact of a facility in or impacting such environmentally sensitive areas.

Pursuant to its statutory duty to act consistently with environmental protection, resource use and development policies of the Commonwealth, the Council will safeguard habitat and the maintenance of antidegradation water quality standards by being consistent with the policies and Policy Appendix of the CZM Program; by complying with use restrictions and prohibitions under the inland and coastal wetlands restriction program, M.G.L. c. 131, § 40A, c. 130, § 105; the scenic rivers act, M.G.L. c. 21, § 17A; the ocean sanctuaries act, M.G.L. c. 32A, §§ 13-17, 18. The Council will make affirmative findings that the characteristics of the area will not be degraded or adversely affected unless compelling countervailing considerations, in balance, warrant approval of the site.

Where the Council has approved a site within or impacting an area of critical environmental concern pursuant to M.G.L. c. 164, §§ 69H, I, J, and where new information is obtained by a regulatory agency after the initial approval of the Council, which if known at the time of initial approval would have received the special weight given to environmental impact for such areas, then such environmental impact will be given special weight in any proceeding under M.G.L. c. 164, § 69K.

(c) Approval of a long-range forecast, supplement, or notice of intention to construct an oil facility which includes a facility to be sited within or impacting an area of critical environmental concern shall not be construed as a waiver of compliance with the requirements of other federal, state, or local agencies as these apply to such an area.

(2) Consideration of National Interests. Consistent with 980 CMR 7.01(5), 7.03(2), 7.06(1), and 8.01(5) and other sections of 980 CMR 7.00 through 9.00 the Council recognizes a national interest in the development of energy resources which are necessary to meet requirements of the nation. Consequently, the Council will give adequate consideration to the national interest in energy facilities and it will not limit its deliberations to the needs of the Commonwealth alone nor restrict the siting of facilities which are necessary to meet energy requirements beyond the Commonwealth.

9.04: Intervention

(1) Agency Intervention.

(a) Pursuant to M.G.L. c. 30A, § 10, any agency with a direct and substantial regulatory interest in matters which may be affected by the site selection, evaluation, and assessment process of 980 CMR 9.00 may intervene before the Council in accord with 980 CMR 1.00.

(b) The Office of Coastal Zone Management within the Executive Office of Environmental Affairs and any agency with implementing responsibility under the

Massachusetts Coastal Zone Management Program may intervene in any proceeding before the Council which involves adjudicatory review of a coastal site or which is subject to a current health, environmental protection or resource use and development policy of the Commonwealth relating to the coastal zone. The Office of Coastal Zone Management will be provided with a copy of all forecasts, supplements, notices of intent, and materials filed under 980 CMR 9.00 for site selection, evaluation, and assessment of facilities proposed for siting within the coastal zone.

REGULATORY AUTHORITY

980 CMR 9.00; M.G.L. c. 164, §§ 69H through 69J.

980 CMR 10.00: SITING OF INTRASTATE LIQUEFIED NATURAL GAS STORAGE

Section

10.01: General Provisions

10.02: Forecast Data Requirements

10.03: Performance Standards for Determining Site Sizes

10.04: Ancillary Requirements

10.01: General Provisions

(1) Scope and Purpose. 980 CMR 10.00 implements the Siting Council's statutory mandate under M.G.L. c. 164, § 69H, I, J and sets forth regulatory standards for the siting of intrastate liquefied natural gas (LNG) facilities proposed for construction in Massachusetts. 980 CMR 10.00 includes forecast data requirements and siting standards.

The purpose of 980 CMR 10.00 is to ensure systematic review of information which is necessary for the Council's determination of need, cost, and acceptable environmental impact.

980 CMR 10.00 includes performance standards for thermal radiation and flammable vapor dispersion in the event of specified design accidents which define acceptable site size, radiation, and environmental impact. Requirements set forth in this chapter are in addition to requirements of 980 CMR 6.00, 7.00 and 9.00 of the Council's regulations. In the case of conflict, 980 CMR 10.00 shall govern in the final instance.

Nothing in 980 CMR 10.00 is to be construed as an infringement upon the authority of the Department of Public Utilities to assure safe and prudent design, construction, operation, and maintenance of LNG facilities. Where an applicant is required to obtain licensing or permit approval from the Council and the Department of Public Utilities, it is encouraged to seek joint review by these agencies.

(2) Definitions.

(a) General Definitions. As used in 980 CMR 10.00:

Accepted Method of Calculation means a formula or technique which is specified in these guidelines or which has been approved by the Council through a rulemaking proceeding.

Dike means a structure surrounding an LNG storage tank which may consist of natural geological formation, compacted earth, concrete, or other material and must be of sufficient size to contain a minimum of 150% of the maximum liquid content of the tank.

Industrial Zone means an area zoned for industrial use or an unzoned area shown by the company to be currently used primarily for industry.

Insulating Material means a substance which may be applied to the external wall of the storage tank and/or dike surfaces and whose properties will decrease the rate of vaporization in the event of a spill.

Site means the area owned or controlled by the operator surrounding the LNG storage tank; has a minimum size equal to the greater of the required

thermal protection zone or vapor dispersion exclusion zone.

Thermal Protection Zone means an area which the operator owns or controls surrounding the LNG storage tank; this zone must be of sufficient size such that in the event of a fire resulting from a spill, thermal flux levels at the outer boundary may not exceed those specified in 980 CMR 10.00.

Vapor Dispersion Exclusion Zone means an area which the operator owns or controls surrounding an LNG storage tank; this zone must be of sufficient size such that in the event of a spill, no flammable vapor having an average gas to air concentration of more than two percent will travel beyond the zone's outer boundary.

(b) Matrix Factor Definitions.

1. Capital Cost Factors

Land Acquisition includes cost of acquiring land, land rights, permits, approvals and associated legal fees.

Site Preparation includes soil testing, clearing, grading and underground piping, water supply, and electrical supply to the site.

Structures and Improvements includes structures associated with LNG processing operations, fencing and roadways.

LNG Processing Equipment includes the installed cost of equipment used to receive, liquefy, hold and regasify LNG for delivery into the operator's distribution system.

LNG Transportation Facilities includes the initial cost of connecting mains and transportation equipment.

Other Equipment includes measuring and regulating equipment, compressor station equipment, communication equipment and equipment not assignable to any of the foregoing factors.

2. Annual Cost Factors

Operating Expenses includes labor; expenses; materials and supplies for engineering, processing and transporting LNG; depreciation, gas purchases, fuel, power, property taxes and gas losses.

Maintenance Expenses includes labor, expenses, materials and supplies for maintenance of land, structures and improvements, processing equipment, transportation facilities and other equipment.

3. Environmental Factors

Ease of Acquisition includes information on number of parcels to be assembled, present land use, projected land use, number of land owners, type of land owner (governmental, corporate, private, etc.), estimated land value, current zoning. (Appropriate Data Source: Municipal tax map, Municipal zoning map)

Climatology includes information on precipitation, temperature, and prevailing winds. (Appropriate Data Source: U.S. Weather Service Climatological Summary)

Geology includes soil type, depth to bedrock, soil permeability, seismic design criteria. (Appropriate Data Source: U.S. Soil Conservation Service,

U.S. Geological Survey)

Hydrology includes permeability, depth to groundwater, location of surface water, location of aquifers, location of flood plains, water quality classifications of contiguous surface water. (Appropriate Data Source: U.S. Geological Survey Soil Conservation Service, Commonwealth of Massachusetts Department of Environmental Quality Engineering, U.S. Department of Housing and Urban Development Flood Plain Zoning Maps)

Transportation Access includes verbal or pictorial description of primary access routes to proposed sites. (Appropriate Data Source: Massachusetts Department of Public Works, Town Maps, U.S. Geological Survey Quadrangle Maps)

Ecological Sensitivity includes an estimate of the uniqueness of the area as a habitat, possibility of the presence of rare or endangered species of plants or animals resulting from a review of 50 CFR 17, the List of Endangered & Threatened Wildlife & Plants, estimate of the amount of site which will be permanently altered. (Appropriate Data Source: MacConnell Cover Maps, Massachusetts Department of Environmental Management, U.S. Fish & Wildlife Service)

Socioeconomics includes projection of land use, expected property tax payments, employment opportunities, air quality and recreational opportunities both with and without the proposed projects. (Appropriate Data Source: Town zoning maps, Regional Planning Commissions, Office of State Planning, Air Pollution Control Districts, Massachusetts Regional Statistical Profiles, Massachusetts Department of Commerce)

Special Resource Commitment includes description of any special resource which will be impacted by the proposed facility. (Appropriate Data Source: Regional Planning Commission)

Other includes description of unique features of the site not covered by any of the other matrix factors.

10.02: Forecast Data Requirements

(1) Facility Need Requirement.

The applicant shall provide a statement of need which will consist of:

- (a) a description of the ways in which the applicant's existing facilities will not be adequate to serve the requirements forecasted;
- (b) a description of the ways in which all other "no-build" alternatives and other supply alternatives such as pipeline system expansion, SNG, propane, etc. considered by the applicant would not be adequate and preferred to serve the requirements forecasted; and
- (c) for two or more sites, at least one of which must be in a non-urban area, a description of how the facility/site proposed will be used to meet the requirements forecasted.

(2) Mapping Requirements.

(a) The applicant shall provide a map or series of maps of the preferred site and all alternative sites proposed which show the following at a useful scale:

1. location of property
2. property boundaries and dimensions
3. major existing structures and equipment on the property
4. location of the following zones:
 - 2,000 BTU/ft² hr zone;
 - 1,000 BTU/ft² hr zone;
 - 460 BTU/ft² hr zone; and the
 - vapor dispersion zone.
5. anticipated location and dimensions of the storage tank, new ancillary facilities, and dike
6. topography of the site out to and including the most distant zone specified in 980 CMR 10.02(2)(a)4.
7. current zoning scheme out to and including the most distant zone specified in 980 CMR 10.02(2)(a)4.
8. special land uses including agricultural land, parks, forests, recreational areas, and areas designated by a governmental agency for protection as natural preserves or historic or scenic districts out to and including the most distant zone specified in 980 CMR 10.02(2)(a)4.
9. location of all hospitals, schools, nursing homes and churches, and places of outdoor assembly out to and including the most distant zone specified in 980 CMR 10.02(2)(a)4.
10. surface water and groundwater resources out to and including the most distant zone specified in 980 CMR 10.03(2)(a)4.
11. population densities out to and including the most distant zone specified in 980 CMR 10.02(2)(a)4.
12. alternative truck routes from exit of nearest highway to site, showing local street names, bridges and elevated roadways, underpasses and tunnels, unpaved roads, and all locations on these routes requiring the exercise of additional caution. Information provided here should also include a general demographic description of the area through which these routes will pass.
13. nearby gas pipelines and point of interconnection for new facility
14. sewers, subway tunnels, drainage systems, underground electrical systems, and all other underground conduits out to and including the most distant zone specified in 980 CMR 10.02(2)(a)4. as well as for all truck routes specified in 980 CMR 10.02(2)(a)4.

(b) The applicant shall provide a system map, showing location of preferred and alternative sites.

(3) Demonstration of Conformity with Siting Standards.

(a) The applicant shall demonstrate quantitatively that the preferred site and all alternative sites meet each siting standard contained in 980 CMR 10.03.

(b) All such demonstrations must be based upon the methods of calculation specified in 980 CMR 10.03.

(4) Alternative Sites Evaluation Matrices.

(a) Purpose - The purpose of the evaluation matrices is to provide a means by which the applicant can demonstrate, in a standardized way, the bases upon which the preferred site was chosen from among the alternative sites proposed.

(b) Methodology

1. Cost matrices

a. The cost matrices shall be assembled as follows:

FIGURE 1

CAPITAL COST MATRIX

<u>FACTORS</u>	<u>SITE A</u>	<u>SITE B</u>
Land Acquisition	\$	\$
Site Preparation		
Structures and Improvements		
LNG Processing Equipment		
LNG Transportation Facilities		
Other Equipment		
TOTAL	\$	\$

FIGURE 2

ANNUAL COST MATRIX

<u>FACTORS</u>	<u>SITE A</u>	<u>SITE B</u>
Operating Expenses	\$	\$
Maintenance Expenses		
TOTAL	\$	\$

b. Current dollar figures shall be estimated for each cost item.

c. The cost matrices must be accompanied by a narrative explaining the sources of the estimated cost figures.

2. Environmental Matrix

a. The environmental matrix should be assembled as follows:

FIGURE 3

ENVIRONMENTAL MATRIX

<u>FACTORS</u>	<u>SITE A COMPARATIVE RATING</u>	<u>SITE B COMPARATIVE RATING</u>
Ease of Acquisition		
Climatology		
Geology		
Hydrology		
Transportation Access		
Ecological Sensitivity		
Socioeconomics		
Special Resources		
Commitment		
Other		

- The ratings should be based upon the total number of sites proposed (number of sites = n). The most preferred site for each factor should receive a rating of n. The site preferred next should be rated n-1, and so forth.

- Reconnaissance level data may be employed in constructing the environmental matrix, including existing studies and reports completed by public or private agencies. If such sources are not available or adequate, site analyses must be conducted.

- The environmental matrix shall be accompanied by a narrative which references the sources of the data used for each factor and an explanation of how these data were used to arrive at the relative rating for each proposed site.

(c) **Summary of Alternative Sites** The applicant must synthesize from the matrices the comparative cost and environmental data for each alternative site, and discuss, in detail, the bases upon which the preferred site was selected over the other proposed site or sites.

10.03: Performance Standards for Determining Site Sizes

(1) Thermal Radiation Protection.

(a) The area of the property must be sufficiently large to provide a thermal protection zone.

(b) Within the protection zone, the dike constructed to impound the LNG may not be located closer to targets listed in 980 CMR 10.03(1)(d) than distance "d".

(c) The protection distance "d" is measured as shown in FIGURE 4 along the line (PT) in a vertical plane defined by the points (T) and (D), where

(T) is a point at the top of the target;

(D) is a point closest to (T) on the top inside edge of the dike;

(PD) is a line in the vertical plane which intersects (D) at an angle of 45° above horizontal;

(w) is the inside distance across the top of the impounding space measured normal to (PD); and

(P) is located where (PT) and (PD) intersect at an angle of 90° or where (PD) equals 3 (w), whichever results in the shortest length of (PD).

FIGURE 4

SEE TEXT

(d) The length of a protection distance in feet may not be less than the distance "d" determined in accordance with the following formula for the target concerned, when "A" equals inside area in square feet measured across the top of the impounding space:

TARGET	PROTECTION DISTANCE
1. Any point in an area outside the property line which is not zoned for industrial use.	$d = 3.6 (A)^{0.5}$
2. Any point in an area outside the property line which is zoned for industrial use.	$d = 2(A)^{0.5}$

(e) For any facility which depends upon surrounding industrially zoned land for compliance as provided in 980 CMR 10.03(1)(d) the applicant must conduct a safety consultation session with the local planning board and with each owner of land in the affected portions of the surrounding industrial zone. Prior to conducting safety consultations, the applicant must confer with the Department of Public Utilities on the scope and content of the safety consultation sessions. The applicant must give notice to the Department of Public Utilities that such consultations have been completed prior to the transfer of any LNG to the site or processing of LNG at the site.

(f) The method described in 980 CMR 10.03(c) and 10.03(d) shall be the accepted method of calculation of the thermal protection distance. Any interested party may request a rulemaking procedure to qualify an additional method of calculation. No facility may be evaluated using a new method of calculation unless the method has been submitted to the Council six months prior to the filing of the forecast containing the facility proposal, and unless that method is approved and accepted by the Council prior to the filing of the forecast containing the

facility proposal.

(2) Vapor Dispersion Exclusion Zone.

(a) Zone Requirement. Each LNG facility shall be designed to prevent flammable vapor from a design spill as defined in 980 CMR 10.03(2)(b) from crossing the property line. The boundary of the vapor dispersion exclusion zone will be determined by the minimum exclusion distance computed in accordance with this section. The vapor dispersion exclusion zone will be determined by a standard at the property line of an average gas to air concentration of no more than 2.0 percent. The boundary or estimated dispersion distance (D) is measured radially from the inside edge of the impounding system along the ground contour to the vapor dispersion zone boundary.

(b) Design Accidents for the Calculation of Dispersion Distance (D) In computing dispersion distance (D) under 980 CMR 10.03(2)(d), the following applies:

1. The value of (D_1) is the lesser of the values resulting from the following vapor generation conditions:
 - a. Vapor generation rate equals the maximum constant rate of discharge from failed transfer piping having the greatest overall flow capacity.
 - b. Vapor generation from sudden contact of LNG with 100% of the impounding system floor area and 50% of all liquid impounding surfaces which the liquid could contact, including the walls and roof of the component served, plus flash vaporization from the maximum constant rate of discharge from failed transfer piping having the greatest overall flow capacity.
2. The value of (D_2) is based on the following applicable conditions:
 - a. For all classes of impounding a sudden total spill of the maximum contents of the largest component served, with vapor generation resulting from liquid contact with surfaces of the impounding system and outer component surfaces exposed to the final static fluid configuration and flash vaporization from the contents of the component served.
3. The distance (D) equals the greater of (D_1) or (D_2).

(c) Vapor Flow Rate.

1. The maximum time (t) required for the release of liquid from a component served in a sudden total spill is determined in accordance with the following equation:

$$(t) = 9(h/G)^{0.5}$$

where (t) is the time, (h) is the difference between the maximum height in feet of the contained liquid and the equilibrium height of liquid when impounded, and (G) is the acceleration of gravity.

2. Impounding and other surfaces which may be contacted by LNG under conditions described in 980 CMR 10.03(2)(b)1. and 10.03(2)(b)2.

may be insulated. The heat transfer value and application technique of the proposed insulating material must be satisfactory to the Department of Public Utilities. The boiling rate of LNG on which (D) is based, is determined by multiplying .9 times the weighted average value of (KPC)^{0.5} determined from eight representative experimental tests on the contact surfaces in the impounding space, where

K = thermal conductivity in (BTU/(HR) (ft) (F°)),

P = density in (1 lb/ft³), and

C = heat capacity in (BTU/(lb) (F°)). The test conditions should vary in terms of the spills' elevation, separate velocity, and quantity.

3. Dispersion distance (D) is determined on the basis that vapor detention space does not exceed:

a. For conditions described in 980 CMR 10.03(2)(b)1.a. of the preceding section, all space provided for liquid impoundment and vapor detention outside the component served; and

b. For conditions described in 980 CMR 10.03(2)(b)2.a. all space provided for liquid impoundment and vapor detention outside the component served less the volume of the liquid that would have entered the impounding space when generating vapor escapes the vapor detention barriers, assuming liquid to be entering the impounding space outside the component served at a constant rate over the time period prescribed by 980 CMR 10.03(2)(c)1.

(d) Calculation of Vapor Dispersion Distance. The boundary or estimated dispersion distance (D) must be calculated in accordance with the applicable parts of Appendices A, B, and C of the publication, "Evaluation of LNG Vapor Control Methods" (American Gas Association, Arlington, VA., 1974), subject to the following parameters and other requirements of 980 CMR 10.03:

1. Average gas concentration in air is 2.0% by volume.
2. Wind speed (w) is 5.0 miles per hour.
3. Source height (H) is zero.
4. Source width (L) is $A^{0.5}$, where A is the inside area measured across the top of the impounding space, as in 10.03(1)(d).
5. The Gifford-Pasquill atmospheric stability category is F (moderately stable).
6. The temperature of the impounding and storage vessel surface is 47°C.

(e) Additional Methods of Calculation. The method reference in 980 CMR 10.03(2)(d) shall be the accepted method of calculation of the vapor dispersion distance. Any interested party may request a rulemaking procedure to qualify an additional method of calculation for vapor dispersion. No facility may be evaluated using a new method of calculation unless that method has been submitted to the Council six months prior to the filing of the forecast containing

the facility proposal, and unless that method is approved and accepted by the Council prior to the filing of the forecast containing the facility proposal.

10.04: Ancillary Requirements

(1) Dike Requirements.

- (a) Each storage tank must be located in a separate dike which has a configuration or design which will
 - 1. prevent liquid from escaping under the spill conditions defined in 980 CMR 10.03(2)(b)1. and 10.03(2)(b)2.
 - 2. intercept a jet of liquid discharged from any feasible location of the component served and at any predictable vertical and horizontal angle of exit and resulting trajectory, except that for low pressure storage tanks having multiple conventionally built vertical cylindrical walls with at least two such walls having full load bearing capability, vertical angles of discharge above the horizontal need not be considered.
- (b) The basic form of the dike may be an excavation, a natural geological formation, manufactured diking, any combination thereof, or any other retaining structure which can be demonstrated to meet the other requirements of this section.
- (c) The impoundment capacity of each dike must have a minimum volumetric liquid impoundment capacity equal to 150% of the volume of liquid in the tank.

(2) Separation of Components. The applicant must design and construct the storage tanks at the site as required by the Department of Public Utilities to enable the predictable movement of personnel, maintenance equipment, and emergency equipment within and around the facility.

(3) Inspection of Insulating Material. The integrity of the insulating material and sealant at each facility must be certified yearly by a registered professional engineer. The results of such inspections must be provided to the Department of Public Utilities as required by that agency. If the insulating material fails to meet the inspection standards, the Department of Public Utilities may order the repair or replacement of the material with the same or superior insulating characteristics as the material originally installed.

(4) Plan for Removal of Precipitation. The applicant must present a plan for the removal of rain, ice, and snow from the diked area surrounding the storage tank. The plan must provide for completion of snow removal within 48 hours after the commencement of the snowfall.

(5) Safety Plan. The company must submit a comprehensive safety plan describing actions to be taken by company personnel and public safety officials in the event of any accident as well as a program of yearly safety consultations with each property owner within the affected portion of the industrial zone. These consultations will be conducted as prescribed by the Department of Public Utilities. The purpose of this requirement is to

ensure the maintenance of necessary levels of information and preparedness for those persons who are within the affected portion of the industrial zone.

(6) Alarm System. Each facility must be equipped with an alarm system which must be sounded simultaneously with the alerting of the fire department of an accident. The alarm system must be sufficiently loud to alert persons out to and including the most distant zone specified in 980 CMR 10.02(2)(a)4. The company shall notify the Council that this system is operational and that persons within that zone have been acquainted with the system. The alarm system shall be installed and periodically tested as may be required by the Department of Public Utilities.

REGULATORY AUTHORITY

980 CMR 10.00; M.G.L. c. 164, §§ 69H through 69J.

980 CMR 11.00: LICENSING OF HYDROPOWER GENERATING FACILITIES

Section

11.01: General

11.02: Forms

11.03: Coordination of Permitting and Licensing When an ENF Is Being Filed

11.04: Coordination of Permitting and Licensing When an ENF Is Not Required

11.05: Appeals to the Council

11.01: General

(1) Scope. 980 CMR 11.00 shall apply to actions taken by the Council under M.G.L. c. 164, § 69H½, which deals with licensing of hydropower generating facilities.

(2) Statutory Authority. 980 CMR 11.00 is promulgated pursuant to M.G.L. c. 164, §. 69H½ and M.G.L. c. 30A, §§ 2 and 9.

(3) Purpose. The purpose of 980 CMR 11.00 is to implement the policy and provisions of M.G.L. c. 164, § 69H½ which requires the Energy Facilities Siting Council to coordinate the permitting and licensing of hydropower generating facilities by simplifying requirements for permits and licenses in Massachusetts. To this end, the Council has established preliminary notification forms and other forms to be employed for permitting and licensing; will conduct pre-licensing conferences between developers and these agencies jointly with the Secretary of the Executive Office of Environmental Affairs; will assist in resolving disputes between developers and agencies concerning the form, content, level of detail and schedules of information and data requirements; will increase cooperation between the state and federal licensing agencies and will serve as a forum for final administrative appeal for any party aggrieved by a permitting and licensing agency's action or failure to act.

A developer should use the procedures established by this new hydropower statute and regulations. If he does not enter and follow this process, starting with filing one of the new forms - the Hydropower Preliminary Notification Form or the Environmental Notification Form and Hydropower Supplement, he cannot use the appeal section, 980 CMR 11.05.

It is to be noted that 980 CMR 11.00, promulgated under M.G.L. c. 164, § 69H½, do not affect the responsibilities of the Executive Office of Environmental Affairs under M.G.L. c. 30, §§ 62-62H. They do not affect deadlines for final orders imposed upon the Department of Environmental Quality Engineering under M.G.L. c. 131, § 40. Nor do they affect the "federal consistency" review authority of the Massachusetts Coastal Zone Management Office under 16 U.S.C. Sec. 1451 *et seq.*

Developers who have already begun the state licensing process when 980 CMR 11.00 become effective may utilize the procedures of 980 CMR 11.00, but cannot utilize the appeal section, 980 CMR 11.05, unless they have gone through an informal Council-run pre-licensing conference similar to that described in 980 CMR 11.03(6).

(4) Application of 980 CMR 2.00 and 1.00. 980 CMR 2.00 shall apply to 980 CMR 11.00 except to the extent that 980 CMR 2.00 and 980 CMR 11.00 are in conflict. In the event of a conflict, 980 CMR 11.00 shall prevail over 980 CMR 2.00. For the application of 980 CMR 1.00 to appeals under 908 CMR 11.00, see 980 CMR 11.05(2).

(5) Application of 980 CMR 11.00 to Final Orders of the Department of Environmental Protection. Notwithstanding other provisions of 980 CMR 11.00, the Department of Environmental Quality Engineering shall act on a request for a final order within the time limitations specified by M.G.L. c. 131, § 40.

(6) Definitions. For the purpose of 980 CMR 11.00 the following definitions shall apply unless the context or subject matter requires and specifies a different interpretation.

Action or failure to act occurs when:

- (a) permitting and licensing agency grants or denies an approval, permit, license, certificate or permission to a developer,
- (b) an agency fails to grant or deny an approval, permit, license, certificate or permission within a time limit set by the Council under 980 CMR 11.03(12), or
- (c) an information deadlock is established, as described in 980 CMR 11.03(9).

Agency means one of the "permitting and licensing agencies" as defined in M.G.L. c. 164, § 69H½. "Permitting and licensing agencies" are defined there as "all agencies, authorities, and departments of the Commonwealth, and local conservation commissions whose approval, order, order of conditions, permit, license, certificate, or permission in any form is required prior to or for construction of a hydropower generating facility, except the Secretary of Environmental Affairs acting under the provisions of M.G.L. c. 30, §§ 62-62H and shall include, but not be limited to, the Department of Environmental Protection including the Division of Water Pollution Control, the Department of Environmental Management, the Department of Fisheries, Wildlife and Recreational Vehicles, the Conservation Commission with jurisdiction over the proposed site, the Massachusetts Historical Commission, the Department of Public Utilities, and any other agency, authority, or department of the Commonwealth, county, city or town government, as may from time to time be so designated by the Energy Facilities Siting Council."

Appeal means an appeal under 980 CMR 11.05 from an action or failure to act on the part of a permitting and licensing agency.

Conduit means an enclosed water conveyance facility used primarily as a water supply aqueduct or sewer pipe.

Dam means any structure for impounding water which is usable for electric or mechanical power generation, if the impoundment supplies all, or the substantial part of, the total hydraulic pressure (head) developed for such generation.

Days means calendar days; provided that in computing time periods under these

regulations, such periods shall exclude the day of the event which triggers the time period. It is further provided that should the last day of a period fall on a Saturday, Sunday, legal holiday or declared state of emergency day, such period shall be extended to the close of business on the next business day.

Developer means any person, corporation, partnership, municipality, utility or other entity which is attempting to obtain the permits and licenses required prior to or for the construction or start-up of a hydropower generating facility.

ENF is an Environmental Notification Form as defined in the Massachusetts Environmental Policy Act regulations under M.G.L. c. 30, §§ 62-62H.

Existing Dam means any dam which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installment of any small hydropower generating facility.

Flashboards means any appurtenant structure to a dam consisting of a set of boards or gates attached to the top, or crest, of such dam so as to impound water to a higher elevation than the dam alone, but being designed to bend or otherwise fail or allow removal or mechanical lowering of such boards or gates under conditions of high flow of water, or water and ice, in the impounded waterway.

Hearing Officer means any person designated by the Council or its Executive Director to conduct hearings of appeals pursuant to 980 CMR 11.05.

Hydropower Generating Facility means any electric or mechanical power generating unit whose power source is water flow and which is not a facility as defined in M.G.L. c. 164, § 69G.

HPNF is the Hydropower Preliminary Notification Form established by the Council as the developer's preliminary filing form under 980 CMR 11.04.

Hydropower Supplement is the form established by the Council to be filed along with the ENF as the developer's preliminary filing form under 980 CMR 11.03.

Land Subject to Flooding is as defined in M.G.L. c. 131, § 40 and implementing regulations.

MEPA Unit is that branch of the Executive Office of Environmental Affairs which implements the Massachusetts Environmental Policy Act and regulations thereunder.

Pre-licensing Conference means the meeting between the developer and the agencies to be called, noticed and conducted under 980 CMR 11.03(4) to 11.03(6). Whenever possible, this conference will be combined with the MEPA "scoping session", held under M.G.L. c. 30, §§ 62-62H and implementing regulations, in a single meeting.

Waterway is as defined in M.G.L. c. 91 and implementing regulations.

Wetland is a wetland, swamp, marsh, salt marsh, or flat as each term is defined in M.G.L. c. 131, § 40 and implementing regulations.

11.02: Forms

(1) General. The Council will consult with the affected agencies before establishing or modifying any forms described under the next two rules. Any Council directive establishing or modifying these forms will become effective on the fifth day after mailing of notice of said directive to the agencies.

(2) Preliminary Notification Form. The Council hereby establishes two preliminary notification forms to be filed with the agencies. A modular format is incorporated within each form to accommodate various project situations and related informational needs. The agencies may not require the developer to file any forms other than these, except the "Notice of Intent to file an ENF" under M.G.L. c. 30, §§ 62-62H and implementing regulations, before the pre-licensing conference. The first of these is a Hydropower Supplement to the ENF, which is to be attached with an ENF so as to create a single form and filed under 980 CMR 11.03; the second is a Hydropower Preliminary Notification Form (HPNF), to be filed under 980 CMR 11.04 when a determination has been made by the Secretary of the Executive Office of Environmental Affairs that an ENF is not required. At the option of the developer, these forms replace the Notice of Intent normally filed with local Conservation Commissions under the Wetlands Act, M.G.L. c. 131, § 40.

These forms can be modified in accordance with the procedures of 980 CMR 11.02(1).

(3) Other Forms. The Council may establish, and later appropriately modify, forms for use in connection with the procedure of 980 CMR 11.03, 11.04, and 11.05, below. It may also establish, consolidate, or modify forms to be used by one or more of the agencies, in lieu of, or in addition to, any forms which developers are required to prepare in order to obtain permits or licenses from said agencies.

11.03: Coordination of Permitting and Licensing When an ENF Is Being Filed

(1) Applicability. This Part applies when a developer is filing an Environmental Notification Form (ENF).

(2) Review of Draft Notification Form. Before filing with the agencies, the developer shall submit a draft version of the combined ENF-Hydropower Supplement to the Council. The Council shall make a determination, not later than ten days after receiving such draft form, whether or not it is complete. The Council may reject a draft form which is patently deficient or it may accept it but recommend to the developer that supplementary information be included that would improve and expedite the permitting

and licensing agencies' review process. The Council shall inform the developer in writing of its action within ten days of submission of the draft form.

(3) Filing. A developer shall file the combined ENF-Hydropower Supplement in accordance with the filing instructions and "List of Agencies" in the Hydropower Supplement, in the number of copies indicated. Evidence of proper filing shall be provided by a developer to the Council.

Filing of the ENF-Hydropower Supplement shall be made at such point in project planning or management as a developer may deem to be appropriate to the circumstances of the project, but shall be made no later than 60 days after official notice in the Federal Register that such developer has filed for a license or exemption with the Federal Energy Regulatory Commission. A developer may request, and the Council may approve, an extension of this filing time upon a showing of good cause.

These filing instructions do not affect the requirement to publish a "notice of intent to submit an ENF", under M.G.L. c. 30, §§ 62-62H and implementing regulations, within 30 days before filing the ENF.

The Council may require a developer to submit information supplementing his filing to the agencies, in advance of the pre-licensing conference.

(4) Effect of Filing. Receipt of the ENF and Hydropower Supplement by the agencies will trigger the Massachusetts Environmental Policy Act review process and the review process of all agencies. The ENF and Hydropower Supplement shall, at the option and indication of the developer in such form, serve in lieu of the Notice of Intent for the local Conservation Commission's review process under M.G.L. c. 131, § 40.

(5) Arrangements for Pre-Licensing Conference.

(a) The Council shall set a date for any pre-licensing conference to be held under 980 CMR 11.03(6) after consultation with the MEPA Unit. This date shall be within 40 days after the Council receives an ENF and Hydropower Supplement, or within 30 days after publication in the Environmental Monitor under M.G.L. c. 30, §§ 62-62H and implementing regulations, whichever is sooner. The pre-licensing conference, whenever feasible, should be held in conjunction with the MEPA Unit's "scoping session", held under M.G.L. c. 30, §§ 62-62H and implementing regulations, and should be held at or near the project site.

(b) The Council shall notify or direct the developer to notify all agencies, federal regulatory agencies, providers of financial assistance, the electric utility in whose service territory the proposed facility is located, and other interested persons or parties of the time, date and place of the pre-licensing conference. Notification shall be accomplished by mail and publication, as the Council deems appropriate.

(6) Pre-Licensing Conference.

(a) Pre-licensing conference shall be co-chaired by a person designated by the Council and one designated by the Secretary of the Executive Office of

Environmental Affairs, unless they agree otherwise.

(b) Pre-licensing conferences will be public and non-adjudicatory, and it is not required that an official record be kept. Copies of documents circulated, however, will be kept by the Council for inspection by any persons interested.

(c) Matters for discussion may include the developer's proposal and the responses of the agencies and other participants. The agencies may be asked to comment upon the following matters:

1. their jurisdiction over the project as proposed;
2. their particular concerns regarding the project;
3. what additional information, data and studies they will need; and
4. what additional forms or applications the developer will be required to fill out.

(7) Statement of Agency Requirements.

(a) Within 15 days after the pre-licensing conference, each agency notified of the pre-licensing conference shall mail or deliver a statement to the developer, and file a copy with the Council. The statement shall specify:

1. the extent of the agency's jurisdiction over the project as proposed;
2. the agency's particular concerns regarding the project;
3. what additional information, data or studies the agency will need in order to make a permitting or licensing decision;
4. what additional forms or applications developers will be required to fill out; and
5. that the agency's responses to 980 CMR 11.03(7)(a)1. through 4. are complete and accurate.

(b) 980 CMR 11.03(7)(a) statements may be used by a developer as evidence of state and local consultation for Federal Energy Regulatory Commission licensing.

(c) These 980 CMR 11.03(7)(a) statements shall be considered by the Council in any informal dispute resolution under 980 CMR 11.03(11), and shall be part of the record in appeal hearings under 980 CMR 11.05.

(8) Determination of Filing Adequacy.

(a) Once a developer has filed the information, data, studies, forms and applications asked for by a particular agency under 980 CMR 11.03(7), he shall mail a letter to that agency, with a copy mailed or hand delivered the same day to the Council, stating his opinion that he has filed all materials necessary for that agency to make a final decision.

(b) Within 15 days after receipt of a 980 CMR 11.03(8)(a) letter, an agency shall mail a responding letter to the developer, with a copy mailed or hand delivered the same day to the Council, stating:

1. that the materials filed are sufficient for the agency to make a final decision; or
2. what additional materials are still needed.

(c) If the agency's response under 980 CMR 11.03(8)(b) is that additional

materials are still needed, the developer should file the additional requested materials. If the agency does not respond within seven days after this filing, the filing shall be presumed complete.

(9) Information Deadlock. If a developer believes that an agency is unreasonable in requiring additional information, data, or studies under 980 CMR 11.03(7)(a), 11.03(8)(a), or 11.03(8)(b)2., it may withhold the required materials and request a permit or license denial, such denial shall be provided within seven days by the agency. This denial may then be appealed under 980 CMR 11.05, after exhaustion of administrative remedies, as an "action or failure to act".

(10) Project Alterations.

(a) If a developer makes any substantial changes or modifications in the design or operational plans of his project after the pre-licensing conference, he shall send a description of said changes or modifications to each agency notified of the pre-licensing conference, and to the Council.

(b) If an agency finds the changes or modifications significant, it shall reflect that fact in its 980 CMR 11.03(7) statement, or shall mail or deliver to the developer, and send a copy to the Council, an amended 980 CMR 11.03(7) statement. If an amended 980 CMR 11.03(7) statement is not sent within 15 days after receipt of notice of the change or modification, the developer and the Council may assume that they will not affect that agency's requirements or final decision.

(11) Informal Dispute Resolution. Upon request by a developer or an agency, the Council shall make reasonable efforts to assist them in resolving disputes concerning the form, content, level of detail and schedules of agency requirements.

(12) Time Limits for Final Agency Decisions. Once the Council determines, based on informal or written communication, receipt of agency statements under 980 CMR 11.03(7) or 11.03(8)(b)1., or applicability of the 980 CMR 11.03(8)(c) presumption, that no agency requires any further materials from the developer in order to make a final decision, the Council shall set a single time limit of not greater than 90 days within which all agencies must issue their final determinations whether or not to issue the appropriate licenses, certificates, sign-offs or other evidence of approval of the application.

(13) Effect of Environmental Impact Report Upon Time Limits. If the developer is required to file an environmental impact report under M.G.L. c. 30, s. 62B, the Council may alter the time framework contemplated in 980 CMR 11.00, to conform with the requirements of M.G.L. c. 30, § 62D.

11.04: Coordination of Permitting and Licensing When an ENF Is Not Required

(1) Applicability. 980 CMR 11.04 applies when a proposed project does not require MEPA review, pursuant to M.G.L. c. 30, § 62E and implementing regulations.

(2) Review of Draft Notification Form. Before filing with the agencies, a developer shall submit a draft version of the Hydropower Preliminary Notification Form (HPNF) to the Council. The Council shall make a determination, not later than ten days after receiving such draft HPNF, whether or not it is complete. The Council may reject a draft HPNF which is patently deficient or it may accept it but recommend to the developer that supplementary information be included that would improve and expedite the permitting and licensing agencies' review process. The Council shall inform the developer in writing of its action within ten days of submission of the draft HPNF.

(3) Filing. A developer shall file the HPNF with the agencies listed in the HPNF's Table of Agencies, in the number of copies indicated thereon.

Filing of the HPNF shall be made at such point in project planning or management as a developer may deem to be appropriate to the circumstances of the project, but shall be made no later than 60 days after official notice in the Federal Register that such developer has filed for a license or exemption with the Federal Energy Regulatory Commission. A developer may request, and the Council may approve, an extension of this filing time upon a showing of good cause.

(4) Effect of Filing. Receipt of the HPNF shall trigger action of all agencies according to their statutory responsibilities. The HPNF, at the developer's option and indication in such HPNF, shall serve in lieu of the Notice of Intent for the local Conservation Commission's responsibilities under M.G.L. c. 131, § 40, and shall trigger action of all other agencies according to their statutory responsibilities.

(5) Waiver of Pre-Licensing Conference.

(a) The Council may, upon receipt of a draft HPNF, provisionally determine that a pre-licensing conference is not required for a proposed project in one of the following classes:

1. Any project having a capacity of 10kW or less; or
2. Any project having a capacity in excess of 10kW; provided such project is to be located on a conduit; or provided such project is to be located at an existing dam and to be operated by intaking water through existing or restored intake gates and by discharging such water at or below such dam and within 25 feet of the downstream perimeter of such dam including any dam apron, such operation being so designed and managed as to maintain an instantaneous rate of flow in the waterway immediately downstream from such project equal to the rate of inflow to the impoundment behind such dam; and provided further that such project does not involve any of the following:
 - a. dredging or excavation of materials exceeding 20 cubic yards total volume from any waterway area or areas, excepting the removal with negligible environmental impact of vegetation, refuse or similar debris resting on the bottom of any such waterway area;
 - b. placement of fill or new or expanded exterior structural bulk exceeding 10 cubic yards total volume in any area or areas of

- any waterway, wetland or land subject to flooding;
 - c. modification of a dam excepting restoration of previously existing flashboards not exceeding 12 inches in height above the top of such dam and other minor repairs or replacements; and
 - d. temporary or other drawdown of an impoundment, stoppage of flow, or other dewatering measures affecting any area of a waterway, whether for construction or operational purposes.
- (b) At any time not more than 30 days following filing of an HPNF, the Council may, for good cause or at the request of the developer or an agency, determine that a pre-licensing conference shall be convened for a project that was initially exempted, or that qualifies for exemption, from such conference.
- (6) Arrangements for Pre-Licensing Conference.
- (a) The Council shall set a date for the pre-licensing conference upon receipt of the HPNF. This date shall be within 30 days after said receipt.
 - (b) The Council shall notify or direct the developer to notify, all agencies, Federal regulatory agencies, providers of financial assistance, the electric utility in whose service territory the proposed facility is located, and other interested persons or parties, of the time, date and place of the pre-licensing conference. Notification shall be accomplished by mail and publication, as the Council deems appropriate.
- (7) Applicability of 980 CMR 11.03 to 980 CMR 11.04. 980 CMR 11.03(5)(b) to 11.03(12), inclusive, shall apply to 980 CMR 11.04 except that in 980 CMR 11.04 pre-licensing conferences shall be chaired by the Council designee alone, and will not serve as MEPA "scoping sessions" or be chaired jointly with a designee of the Executive Office of Environmental Affairs as under 980 CMR 11.03; pre-licensing conferences will not be held if inapplicable, pursuant to 980 CMR 11.04(5), and in such cases statements of agency requirements shall be mailed or delivered within 30 days of filing of the HPNF, rather than within 15 days of the pre-licensing conference as under 980 CMR 11.03(7).

11.05: Appeals to the Council

- (1) Scope. 980 CMR 11.05 shall apply to appeals under M.G.L. c. 164, § 69H½ to the Council or its hearing officer by parties aggrieved by action or failure to act on the part of any permitting and licensing agency.
- (2) Application of 980 CMR 1.00. The following regulations from 980 CMR 1.00 apply to appeals under 980 CMR 11.05: Docket [1.02(1)], Signatures [1.02(4)], Date of Receipt [1.02(5)], Extensions of Time [1.02(6)], Ex Parte Communications [1.02(7)], Notice of Hearing [1.03(3)], Prehearing Conferences [1.03(5)], Hearings, Hearing Officer [1.04(1)], Motions [1.04(3)], Evidence, Privileges [1.04(4)], Matters for Official Notice [1.04(5)], Objections and Offers of Proof [1.04(6)], Production of View of Objects [1.04(7)], Oral Arguments and Briefs [1.04(8)], Subpoenas [1.05(1)], Intervention [1.05(2)], Participation [1.05(3)], Substitution of Parties [1.05(4)], Consolidation

[1.05(5)], Depositions [1.05(6)], Continuances [1.05(7)], Conferences [1.05(8)], Stipulations [1.05(9)], Written Testimony [1.05(10)], Post Hearing Filings [1.05(11)], Re-Opening Hearings [1.05(12)], Form of Decisions [1.06(1)], Settlements [1.06(2)], Tentative Decisions [1.06(3)], Opportunity for Review of Tentative Decisions [1.06(4)], Final Decisions [1.06(5)], Notice of Decisions [1.06(6)].

(3) Who May Appeal. Parties aggrieved by an agency action or failure to act may appeal. Parties aggrieved include the developer and any party to the agency proceedings determined by the Council to be specifically and substantially affected by those proceedings.

(4) Settlement of Appeal. Before filing an appeal, a party aggrieved must contact the Council. The Council shall notify the other parties to the proceedings below, as well as the agency being appealed, and may require an informal settlement conference before the appeal can be filed. Said conference should be held within ten days after the Council has been contacted.

(5) Time for Appeal. An appeal under 980 CMR 11.05 must be filed within 20 days after the agency's action or failure to act, or within ten days after the conclusion of the 980 CMR 11.05(4) settlement conference, whichever is later. An agency is not deemed to have "acted or failed to act" until after the party aggrieved has exhausted his administrative remedies.

(6) Filing. Papers or documents relating to appeals under 980 CMR 11.05 shall be delivered by hand or mailed to the Council or its designated hearing officer. They shall be deemed filed on the date received by the Council. Papers or documents filed shall be titled: "980 CMR 11.05 Appeal by _____ (party Aggrieved) from _____ (Agency)."

(7) Appeal. An appeal filed under 980 CMR 11.05 shall contain the following:

- (a) The name, address and the phone number of the appellant and attorney, if any;
- (b) The name of the respondent agency;
- (c) The names and addresses of any other participants or parties to the earlier proceedings with the respondent agency;
- (d) A description of the action or failure to act which is being appealed, and a brief outline of procedural steps already taken;
- (e) A description of facts and documentation in support of appellant's claim for relief;
- (f) Argument on the issues of energy needs, cost and environmental impact;
- (g) A description of the relief being sought;
- (h) A description of efforts which have been and are being made to resolve or settle the dispute; and
- (i) Where adjudicatory proceedings have been conducted by the agency being appealed, a full record of said agency decision. Appellant shall request that the

agency issue findings of fact and conclusions of law, and shall provide these.

(8) Notice of Appeal. The appellant shall send, certified or registered mail, return receipt requested, or hand deliver, a copy of the appeal at the time of filing to the director, secretary, commissioner or other person authorized to receive process within the agency from which the appeal is taken and to any parties and participating persons at the earlier agency proceedings. With the copy of the appeal, appellant shall also give notice that answers, petitions to intervene and petitions to participate under 980 CMR 11.05(9) must be filed within ten days after receipt of the notice.

(9) Answer, Petitions to Intervene or Participate.

(a) Answers and Petitions to Intervene or Participate must be filed with the Council, and copies shall be sent to the other parties, within ten days after receipt of notice of the appeal, unless the Council, for good cause, grants an additional seven days.

(b) The Answer by the respondent agency shall describe:

1. the extent to which respondent wishes to participate in the appeal proceedings,
2. the course of the earlier proceedings with the appellant,
3. relevant facts and documentation, and
4. respondent's position or relief sought.

(c) Petitions to Intervene or Participate shall be filed in accordance with 980 CMR 1.05(2) and (3). The Council or its hearing officer shall allow seven days for objections, then rule in accordance with 980 CMR 1.05(2) and (3) within an additional seven days.

(10) Hearings, Hearing Officer. The hearing officer shall conduct hearings under 980 CMR 11.05 in accordance with 980 CMR 1.04(1). Hearings shall be commenced as soon as possible after the close of the pleadings, and in no event more than 25 days after an answer under 980 CMR 11.05(9) has been filed.

(11) Official Record and Transcript. For any appeal under 980 CMR 11.05, the hearing officer shall keep an official record, including testimony and exhibits, in an individual docket. The hearing officer may, but is not compelled to, require that the hearing be taken by sound recording or be reported by a stenographer. Any objections to the accuracy of a transcript not raised within ten days after the transcript is made available to the parties are waived. Any transcript shall be included in the official record of the proceeding.

(12) Scope of Review. When adjudicatory findings of fact in the context of a final decision made by an agency within the statutory jurisdiction of said agency are challenged by an applicant, review on an appeal under 980 CMR 11.05 by the Council of said findings shall be limited to the record presented before the agency; provided, however, that the Council may modify the agency findings of fact or substitute its own findings therefor if the Council determines that said agency findings are;

- (a) in excess of the statutory authority or jurisdiction of the agency;
- (b) unsupported by substantial evidence;
- (c) arbitrary or capricious or an abuse of discretion; or
- (d) not sufficient to permit adequate Council review of the appeal pursuant to the Council's obligation to decide the appeal based upon energy needs, cost, and environmental impact.

Any party wishing to challenge agency findings of fact shall specify which of the grounds above is relied upon and shall state the substance of his claim, including citations to the portions of the agency record he relies upon.

In such cases, the Council may take evidence itself or remand questions of fact to the agency for further proceedings, consistent with the 90 day time limit set forth in M.G.L. c. 164, § 69H¹/₂.

In reviewing facts found by an agency, the Council shall give due weight to the experience, technical competence and specialized knowledge of the agency. Nothing in this section is intended to limit the authority of the Council to decide questions of fact not raised or decided in the context of the final decision of the agency.

(13) Tentative Decision. The requirements of 980 CMR 1.06(3) shall be followed by the hearing officer in reaching a tentative decision. The tentative decision shall be reached within 14 days after the close of the hearing, shall state the reasons therefor, and shall be based upon energy needs, cost, and environmental impact.

(14) Final Decision. The requirements of 980 CMR 1.06(5) and (6) shall be followed by the Council in reaching a final decision. The final decision shall be reached no later than 90 days after the appeal has been filed, shall state the reasons therefor, and shall be based upon energy needs, cost, and environmental impact.

(15) Effect of Decision. A final decision under 980 CMR 11.05(14) shall for all purposes, including judicial appeal, be deemed equivalent to final agency action on the approval, permit, license, certificate or permission which is the subject of the appeal, unless the Council specifies otherwise in its final decision.

(16) Judicial Review. Any party aggrieved by the final decision may seek judicial review in the manner provided by M.G.L. c. 25, § 5.

REGULATORY AUTHORITY

980 CMR 11.00; M.G.L. c. 164, § 69H¹/₂.

980 CMR 12.00: TECHNOLOGY PERFORMANCE STANDARDS

Section

- 12.01: General
- 12.02: Procedures
- 12.03: Technology Performance Standards

12.01: General

- (1) Purpose. The purpose of 980 CMR 12.00 is to streamline the Energy Facilities Siting Board's review of petitions to construct generating facilities that have state of the art environmental performance characteristics.
- (2) Scope. 980 CMR 12.00 applies to any application to construct a generating facility as that term is defined in M.G.L. c. 164, § 69G, filed for review pursuant to M.G.L. c. 164, § 69J¼. These regulations shall not in any way supersede or impair the authority of the Massachusetts Department of Environmental Protection with respect to such facilities.
- (3) Statutory Authority. 980 CMR 12.00 is adopted pursuant to M.G.L. c. 164, § 69J¼, added by St. 1997, c. 164, § 210, which requires the Energy Facilities Siting Board to establish a technology performance standard for electric generating facility emissions, including, but not limited to, emissions of sulfur dioxide, nitrogen oxides, particulate matter, fine particulates, carbon monoxide, volatile organic compounds, and heavy metals.

12.02: Procedures

- (1) Application of Technology Performance Standards. Any petition for approval to construct a generating facility that is filed for review pursuant to M.G.L. c. 164, § 69J¼ must include an analysis of the proposed facility's expected emissions of the criteria and non-criteria pollutants listed in 980 CMR 12.03. Such analysis shall include a summary of the proposed facility's expected emissions, a description of the modelling or other analyses used to derive the expected emissions, and where performance guarantees are available from the equipment manufacturer, a description of the performance guarantees. If the expected emissions of the proposed generating facility exceed the levels set forth in 980 CMR 12.03 for any pollutant or pollutants, the applicant also must provide the information listed in 980 CMR 12.02(2) as part of its petition.

The Energy Facilities Siting Board may request copies of guarantees, work papers, or other documents to verify expected generating facility emissions; however, applicants proposing the use of fuel types that do not contain pollutants specified in the TPS and that when burned do not result in pollutants specified in the TPS, will not be required to provide modelling or testing results, guarantees, work papers or other similar documents with respect to those pollutants.

Emissions testing shall be conducted in accordance with the Massachusetts Department of Environmental Protection's "Guideline for Source Emission Testing" and in accordance with U.S. Environmental Protection Agency tests as specified in 40 CFR Part 60, Appendix A; 40 CFR Part 60, Subpart GG; 40 CFR Parts 72 and 75; or in

accordance with another methodology approved by the Massachusetts Department of Environmental Protection.

(2) Additional Information Requirements. An applicant proposing to construct a generating facility with one or more emissions in excess of the emission levels set forth in 980 CMR 12.03 must provide the following additional information with its petition:

- (a) The applicant shall document the reliability of the proposed generation technology throughout the industry and evaluate the reliability of the proposed fuel supply in Massachusetts.
- (b) The applicant shall provide the cost of the technology per megawatt hour (inclusive of capital costs, operating and fuel costs, and decommissioning costs) relative to other fossil fuel generating technologies.
- (c) The applicant shall discuss how the proposed facility will enhance New England's energy mix and prevent overdependence on one or more fuel sources.
- (d) The applicant shall provide information comparing the overall environmental impacts associated with the proposed facility with the overall environmental impacts of facilities using other fossil fuel generating technologies:

12.03: Technology Performance Standards

(1) Technology Performance Standards for Criteria Pollutants. The following are the technology performance standards for criteria pollutants:

Name of Pollutant	Technology Performance Standard (Pounds per Megawatt-Hour Burning Primary Fuel 100% base load at 50 degrees Fahrenheit)
Sulfur Dioxide	0.021
Nitrogen Oxides	0.120
Fine Particulates - PM10	0.081
Particulate Matter	0.081
Carbon Monoxide	0.077
Volatile Organic Compounds	0.035

(2) Technology Performance Standards for Non-Criteria Pollutants. The following are the technology performance standards for non-criteria pollutants:

Pollutant	Technology Performance Standard
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(Pounds per Megawatt-Hour Burning
Primary Fuel)

Antimony	0.000171
Arsenic	0.00004
Beryllium	0.0000037
Cadmium	0.000033
Chromium	0.00033
Cobalt	0.00007
Copper	0.01
Lead	0.00045
Manganese	0.0026
Mercury	0.0000074

Pollutant	Technology Performance Standard (Pounds per Megawatt-Hour Burning Primary Fuel)
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Nickel	0.0093
Nickel Oxide	0.012
Phosphorus	0.0023
Selenium	0.00004
Vanadium	0.000037
Vanadium Pentoxide	0.00012

(3) Updating to the Technology Performance Standards. The Energy Facilities Siting Board will update the technology performance standards as necessary to reflect improvements in fossil fuel generating and control technologies. Any such updates or new technology performance standards will not apply retroactively to a proposed generating facility with expected emissions that satisfied the technology performance standards in effect on the date the applicant filed its petition for approval to construct the facility.

REGULATORY AUTHORITY

980 CMR 12.00: M.G.L. c. 164, § 69H; c. 164, § 69¼; St. 1997, c. 164, § 210.

980 CMR 12.00: TECHNOLOGY PERFORMANCE STANDARDS

Section

12.01: General

12.02: Procedures

12.03: Technology Performance Standards

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The Energy Facilities Siting Board may request copies of guarantees, work papers, or other documents to verify expected generating facility emissions; however, applicants proposing the use of fuel types that do not contain pollutants specified in the TPS and that when burned do not result in pollutants specified in the TPS, will not be required to provide modelling or testing results, guarantees, work papers or other similar documents with respect to those pollutants.

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Cadmium	0.000033
Chromium	0.00033
Cobalt	0.00007
Copper	0.01
Lead	0.00045
Manganese	0.0026
Mercury	0.0000074

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Nickel	0.0093
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REGULATORY AUTHORITY

980 CMR 12.00: M.G.L. c. 164, § 69H; c. 164, § 69¼; St. 1997, c. 164, § 210.